fident, and an outstanding representative of her home State.

It is with a great deal of pride that I call to the attention of my colleagues in the House of Representatives, the name of Miss Dorothy Anstett as Miss U.S.A. The United States can be pleased with her newly named representative.

SOLDIER, MARINE DIE IN VIETNAM

HON. CLARENCE D. LONG

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, May 20, 1968

Mr. LONG of Maryland. Mr. Speaker, Sp4c. Larry L. Tolliver and Pfc. Michael L. Kidd, two fine young men from Maryland, were killed recently in Vietnam. I wish to commend their bravery and honor their memories by including the following article in the RECORD:

SOLDIER, MARINE DIE IN VIETNAM

A 24-year-old Army specialist and a 19-year-old marine were listed by the Defense Department yesterday as killed in action in South Vietnam.

They were Army Spec. 4 Larry L. Tolliver, husband of Mrs. Jane E. Tolliver, of Bel Air, and Marine Pfc. Michael L. Kidd, son of Mr. and Mrs. John E. Kidd, of Hampstead, Carroll county.

Spec. 4 Tolliver, a native of Harford county, attended Bel Air High School. He was drafted in June, 1967, and was sent to Fort Bragg, N.C.

He took advanced individual training at Fort Knox, Ky., after which he was sent to South Vietnam and assigned to the 11th Armored Cavalry as commander of a tank track.

Mrs. Tolliver said she had received word Tuesday that her husband had been killed May 8 near his Xuan Loc base about 60 miles northwest of Saigon.

In his last letter, Mrs. Tolliver said, he wrote that "he was in a lot of action" and that his outfit "was constantly on the move."

Besides his wife Specialist Tolliver is survived by his son of 6 months, Phillip Lee Tolliver and his stepfather and mother, Mr. and Mrs. Robert Mays, of Bel Air.

Private Kidd graduated from the North Carroll High School and enlisted in the Marine Corps in June, 1967. He took his basic training at Parris Island, S.C. and moved on to Camp Lejeune, N.C.

After completing advanced training at Camp Pendleton, Cal., he shipped out with a rifle platoon in the 2d Battalion, 5th Marines, 1st Marine Division.

Private Kidd arrived in South Vietnam in January, according to his mother and served at Da Nang and Hue. While on patrol at Phu Loc he received fragmentation wounds from an explosive. He died May 3.

Besides his parents, he is survived by a brother, Timothy L. Kidd, and two sisters, Patricia A. Kidd and Cathy D. Kidd.

Also surviving are Mr. and Mrs. Walter Zepp, of Rocks, Harford county, his maternal grandparents and Mrs. Howard Kidd, of Baltimore, his paternal grandmother.

Services will be held at 2 P.M. today at the Tipton-Eline funeral establishment, Hampstead. Burial will be in Mount Zion Cemetery.

DO WE HAVE AN ATTORNEY GENERAL?

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 20, 1968

Mr. TEAGUE. Mr. Speaker, the following article appeared in the Friday, April 26, edition of the Evening Star. The article speaks for itself, but again I would ask, "Do we have an Attorney General?"

THREATS OF PAY-OR-BURN POSE PROBLEM TO POLICE

(By Donald Smith)

District police are worried that recent attempts to solicit money from white merchants, sometimes under threats of burning down their stores if the money is not paid, may be growing.

"I'm afraid that if this trend develops further we're liable to have a Mafia type of extortion operation," Inspector Thomas I. Herlihy, head of the police Intelligence Division, said today.

The division has had numerous complaints from businessmen who report being contacted in person and by telephone by solicitors.

In cases of solicitations being backed by threats of arson, Herlihy said, "Obviously there have been some who have paid off and not reported it."

STORE OWNER WAVES GUN

A store owner in the 1800 block of 7th Street, contacted by The Star, said he had waved a pistol at one such solicitor when the man demanded $50. The man ran out of the store.

The owner, who asked that he not be identified, said a well-dressed Negro entered his store at about 11 a.m. Monday and said, "Give me $50 and I'll tell them not to burn up your building." The owner then pulled out the gun and the man fled.

"I built this store myself 37 years ago," the owner said. "But I'm not going to pay somebody not to burn it down."

Numerous merchants said they had been asked by members of the Student Nonviolent Coordinating Committee to contribute smaller amounts—not, however, under threat.

"A SNCC worker came in Thursday and asked for money so they could send kids to summer camp, or something like that," said the owner of a grocery store on 7th Street NW.

"I gave him a check for $5," he added. "I would have been crazy not to."

POSTERS BEING SOLD

Many stores throughout the city display a framed poster commemorating the death of the Rev. Martin Luther King Jr., whose assassination April 4 touched off widespread arson and looting.

The posters have been sold by door-to-door solicitors for $1 each. The frame costs $3. Also being sold are Martin Luther King buttons for $1 each.

Inspector Herlihy pointed out that soliciting without a permit from the Department of Licenses and Inspection is illegal. There have been no arrests in connection with the posters and buttons, however, because of a lack of complaints.

He also pointed out that implied threats such as "I'll be back later" if a merchant refuses to pay extortion money are difficult to prosecute.

SENATE—*Tuesday, May 21, 1968*

The Senate met at 9:30 o'clock a.m., on the expiration of the recess, and was called to order by the President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Let us pray.

O Lord our God, Thy goodness is ever before us and Thy mercy has followed us all our days. Facing problems and difficulties that test our power to the limit, save us from being cynical or faint-hearted.

As citizens of a world that carries on its sagging shoulders problems of human burdens and suffering greater than humanity has ever borne, make us such men that Thou mayest speak to us and that to this bewildered generation we may be broadcasters of Thy voice.

Give us courage and strength for the vast task of social rebuilding that needs to be dared if life for all men is to be made full and free.

We ask it in that Name which is above every name. Amen.

THE JOURNAL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Journal of the proceedings of Monday, May 20, 1968, be approved.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Geisler, one of his secretaries, and he announced that the President had approved and signed the following acts:

May 17, 1968:

S. 391. An act to amend the act of March 1, 1933 (47 Stat. 1418), entitled "An act to permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes";

S. 1119. An act to grant minerals, including oil and gas, on certain lands in the Crow Indian Reservation, Mont., to certain Indians, and for other purposes;

S. 1395. An act for the relief of Dr. Brandla Don (nee Praschnik);

S. 1406. An act for the relief of Dr. Jorge Mestas;

S. 1483. An act for the relief of Dr. Pedro Lopez Garcia;

S. 1918. An act for the relief of Dr. Gabriel Gomez del Rio;

S. 1968. An act for the relief of Dr. Jose Ernesto Garcia y Tojar;

S. 2005. An act for the relief of Dr. Anacleto C. Fernandez;

S. 2022. An act for the relief of Dr. Mario Jose Remirez DeEstenoz; and

S. 2745. An act to provide for the observance of the centennial of the signing of the 1868 treaty of peace between the Navajo Indian Tribe and the United States.

On May 18, 1968:

S. 948. An act for the relief of Seaman Eugene Sidney Markovitz, U.S. Navy;

S. 1147. An act for the relief of Mariana Mantzios;

S. 1173. An act to convey certain federally owned lands to the Cheyenne and Arapaho Tribes of Oklahoma;

S. 1180. An act for the relief of Ana Jacane;

S. 1490. An act for the relief of Yang Ok Yoo (Maria Margurita);

S. 1828. An act for the relief of Susan Elizabeth (Cho) Long;

S. 1829. An act for the relief of Lisa Marie (Kim) Long;

S. 1946. An act to amend the repayment contract with the Foss Reservoir Master Conservancy District, and for other purposes; and

S. 2285. An act for the relief of Gordon Shih Gum Lee.

On May 20, 1968:

S. 2023. An act for the relief of Virgilio A. Arango, M.D.;

S. 2078. An act for the relief of Dr. Alberto De Jongh;

S. 2132. An act for the relief of Dr. Robert L. Cespedes;

S. 2139. An act for the relief of Dr. Angel Trejo Padron;

S. 2149. An act for the relief of Dr. Jose J. Guijarro;

S. 2176. An act for the relief of Dr. Edgar Reinaldo Nunez Baez; and

S. 2193. An act for the relief of Dr. Alfredo Jesus Gonzalez.

EXECUTIVE MESSAGE REFERRED

As in executive session,

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States submitting the nomination of Brig. Gen. William M. Glasgow, Jr., U.S. Army, to be a member of the California Debris Commission, which was referred to the Committee on Public Works.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senator from Delaware [Mr. WILLIAMS] is recognized for a half hour.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Delaware yield for a unanimous-consent request?

Mr. WILLIAMS of Delaware. I yield.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that all committees may be permitted to meet during the session of the Senate today.

Mr. HRUSKA. Mr. President, reserving the right to object—and I shall object—in the absence of the minority leader, and as a result of a discussion in which several Senators participated, I shall object to that request. We are engaged in a very important debate, and it is rather disconcerting, to say the least, to be distracted from the Senate's work here in an effort to try to avoid delinquency in attendance at committee hearings. When a Senator is in committee, he does not represent his State in the Chamber, and vice versa. So, very respectfully, and somewhat reluctantly, I object to the request.

The PRESIDING OFFICER (Mr. HANSEN in the chair). Objection is heard.

Subsequently, the following requests were made:

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Subcommittee on Intergovernmental Relations of the Committee on Government Operations be permitted to meet during the session of the Senate today.

Mr. HRUSKA. Mr. President, reserving the right to object—and I shall not object to this one—special circumstances have arisen with respect to a hearing that is just about to commence. Recognizing the special situation that exists there, I do not object to this present request, for this morning.

Mr. BYRD of West Virginia. I thank the Senator from Nebraska.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Government Operations and the Subcommittee on Flood Control, Rivers, and Harbors of the Committee on Public Works be permitted to meet during the session of the Senate today.

Mr. HRUSKA. Mr. President, reserving the right to object, and I do not object, I do this reluctantly. Last week all subcommittee and committee chairmen were put on notice that in this important debate objection would be entered to holding committee hearings during this important debate. A Senator is to choose whether he will forgo representation of his State in this Chamber or whether he will forgo representation of his State in the committee. I do not think that Senators should have to make that type choice in a matter as important as this matter.

I do not object to this request, but I reiterate there will be, by request and by this Senator's personal conviction, an assertion of the right to object to further committee meetings as the debate proceeds.

Mr. BYRD of West Virginia. The Senator has justification for the expression he has made. I thank the Senator for allowing these subcommittees to meet.

The PRESIDING OFFICER. Without objection, it is so ordered.

FISCAL POLICIES

Mr. WILLIAMS of Delaware. Mr. President, Nero fiddled while Rome burned, and the Johnson administration insists on playing politics while the American dollar goes down the drain.

For 16 months the President has been giving lipservice to the need for a tax increase and spending reductions in order to bring our deficit more nearly under control and check the inflationary spiral which is threatening to undermine the American dollar. Now that the Congress has passed such a measure the administration, through its backstage maneuvers, is trying to defeat the conference report.

On Wednesday of last week the President called a meeting of the Democratic leadership at the White House, and shortly afterward an announcement was made by the House leadership that a vote on the combined tax and expenditure reduction bill would be postponed until early June.

I quote the caption of the announcement as it appeared in Thursday's Wall Street Journal, "House Democrats Delay Tax Vote Until Early June, Opposition to a $6 Billion Spending Cut Is Causing Acute Political Problems."

On the same day there appeared two other articles of equal significance, one entitled "Gold Price Hits New High Again in London, Paris," and the second relating to the war in Vietnam is entitled "562 U.S. Dead Highest of Any Week in War."

I ask unanimous consent that these articles be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. WILLIAMS of Delaware. Mr. President, this is no time for politics. American boys are dying on the battlefield, and we at home face a serious financial crisis.

Before I begin to discuss this question of reducing the projected expenditures for fiscal 1969 by $6 billion, there are two points which should be emphasized.

First, this $6 billion reduction does not mean a cutback in any existing program or service as compared to expenditures for the same programs in fiscal 1968. The President's budget for fiscal 1969 projected total expenditures—excluding Vietnam costs—of $159.8 billion. In fiscal 1968 total outlays, including both expenditures and net lending—excluding special Vietnam costs—totaled $150.6 billion. This represents a projected expenditure increase for fiscal 1969 in non-Vietnam projects of $9.2 billion. Therefore, the $6 billion mandatory expenditure reduction as embodied in the bill which passed the Senate would still leave the administration $3.2 billion more to be spent for domestic programs in fiscal 1969 than was spent for the same programs in fiscal 1968.

In other words, what the Senate in effect said or did when it passed the $6 billion mandatory expenditure reduction was to tell the administration that it could only increase its expenditures on non-Vietnam programs in fiscal 1969 by $3.2 billion rather than by $9.2 billion as it had originally planned.

To support this point I ask unanimous consent that at the conclusion of my remarks there be printed the chart which appears on page 25 of the President's 1969 budget message.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. WILLIAMS of Delaware. Mr. President, there is another definite advantage to this $6 billion expenditure reduction which thus far has been overlooked.

Reducing expenditures by $6 billion in fiscal 1969 will eliminate the necessity of borrowing this additional $6 billion.

Since we are operating at a substantial deficit this money would have to be borrowed in new financing. The Government is now paying 6 percent interest. This means that by reducing expenditures by $6 billion the Government will save $360 million per year in annual interest charges, which savings would not be available if no reductions were made. This $360 million savings in interest charges will finance many of the programs about which so many crocodile tears are being shed.

Second, neither the $6 billion mandatory expenditure provided for in H.R. 15414 nor the $10 billion reduction in new obligational authority as requested in the 1969 budget necessarily delegates any authority to the President.

Not one appropriation bill for fiscal 1969 has as yet been acted upon by the Congress, and during consideration of these various bills the Congress can specify where the $6 billion spending reduction and the $10 billion reduction in new obligational authority should be made.

To the extent that Congress does not discharge its responsibility in specifying the places for these reductions, then and then only is the President directed to designate the places for the cuts.

Furthermore, even assuming that this parliamentary situation did not exist, there is ample precedent for Congress to call upon the President and the Budget Director to send a report to Congress specifying where expenditure cuts could be made in their budget.

I cite one precedent:

On March 12, 1957, during the Eisenhower administration, the House of Representatives passed the following resolution—House Resolution 190:

Whereas the House of Representatives must, in the public interest, make substantial reductions in the President's budget for the fiscal year 1958, be it hereby

Resolved, That the President respectfully be requested to indicate the places and amounts in his budget where he thinks substantial reductions may best be made; and be it further

Resolved, That a copy of this resolution be transmitted to the President.

During the debate on this resolution Mr. Cannon, then the chairman of the Appropriations Committee, made the following argument:

Mr. CANNON. In taking up this resolution let us consider first what the resolution does not do. We have had a great field day here in which imagination has run riot, and in which the principal defense seems to be charges of political maneuvering. Time and again we were told that we were trying to shift the burden of responsibility from the shoulders of Congress to the Executive. Nothing could be further from the truth. No one who reads the resolution, and it is very brief, could get that impression. . . .

It delegates no powers. It abdicates no functions or prerogatives of the committee or of the House. We do not ask the President to cut the budget. All we ask of the President is counsel and advice.

Section 3 of article II of the Constitution provides that the President "shall from time to time give to the Congress information of the state of the Union and shall recommend to their consideration such measures as he shall judge expedient and necessary." Surely so vital a measure as the budget, which may spell national life and death, comes within this category.

No one else in the world is in a better position than the President to give this advice.

During the same debate Mr. MAHON, the present chairman of the Appropriations Committee said:

Mr. MAHON. We have a job, and we propose to do it, because we said we must cut the budget. We have this duty to perform, but we need all the help we can get from the heads of the Government agencies and the military leaders of the country. We will make cuts when we know we can safely make them. We say to the President, "Will you not lend your prestige and your time to the project?" The Budget and Accounting Act says this:

"The President shall send up a budget with estimates of spending and appropriations, as in his judgment are necessary."

Well, since that budget was submitted, many things have transpired which lead me to believe that in the President's judgment this is not the budget which he feels Congress should be considering.

This resolution passed the Congress on March 12, 1957, and among those voting for it were the present Speaker of the House, Mr. MCCORMACK; his assistant, Mr. CARL ALBERT; Mr. HALE BOGGS, of Louisiana; Mr. KING, of California; Mr. MAHON, the present chairman of the House Appropriations Committee; and Mr. MILLS, the chairman of the Ways and Means Committee, together with a substantial number of other Members of the House of Representatives.

I review this record to point out that there is ample precedent for the action taken by the Senate and as later approved by the conferees.

If this one precedent is not enough I cite another.

On March 8, 1957, the late Senator from Virginia, Mr. Harry F. Byrd, Sr., as chairman of the Joint Committee on Reduction of Nonessential Federal Expenditures, incorporated in the CONGRESSIONAL RECORD a copy of a letter which he had addressed to Hon. Percival F. Brundage, the Director of the Budget. I quote from that letter:

I have noted with satisfaction your testimony before the House Appropriations Committee on March 6 that you, as Budget Director, have requested all agencies of the Government to submit to you suggestions to reduce the monstrous budget which was submitted to the Congress.

There is not much reason to hope that these agencies will voluntarily recommend that their appropriations be reduced; yet this action, at least, indicates an awareness by the Budget Director of the growing discontent among the people because of the bigness of the pending budget.

I am also encouraged to note that the President, in his press conference yesterday, indicated a study to delay some construction programs included in the budget.

I have never contended that the executive branch must bear the sole responsibility for excessive public spending. The Congress and the people who have heretofore supported heavy spending must bear their share of the blame, but I do think the executive branch has the first responsibility, namely, under the law, to originate a budget, adhering to economy and avoiding waste, and to provide only for the essential functions of government.

For the first time in my 24 years of service in the Senate, I see the people themselves, throughout the Nation aroused and demanding retrenchment in Government spending. This being a democracy, the Congress is anxious to follow the public will and vote for retrenchment, but the leadership of the executive branch is essential for full success, because it is an overwhelming task to reduce by amendments the 550 executive accounts, many of which do not even appear in appropriation bills.

Such leadership, let me remind you, was given by President Eisenhower in the past. In 1953, when the President took office, he was confronted with a Truman-prepared budget of $78.6 billion. The President, with the aid of Congress, reduced the Truman budget to $67.8 billion, a reduction of over $10 billion in expenditures. What was done then can be done now, if there is the will to do it. I do think, however, and I am writing you with the utmost frankness, that you, as Budget Director, owe a justification to Congress and to the people in that you presented to the President an expenditure budget of $71.8 billion, which is $3 billion in excess of fiscal 1957, and $7 billion in excess of fiscal 1955. . . .

I hopefully await the results of your investigations and word from you and the President as to how the pending budget can be reduced.

I ask unanimous consent that the full text of Senator Byrd's letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. WILLIAMS of Delaware. At the time that Senator Byrd incorporated this letter in the RECORD, wherein he requested the assistance of the Budget Director and the President to point out where a reduction in expenditures could best be made, he was complimented on his actions by none other than the majority leader of the Senate, the man who is now serving in the White House, as follows:

Mr. JOHNSON of Texas. First, I wish publicly to express my great admiration and respect for the distinguished senior Senator from Virginia, the learned chairman of the Committee on Finance. Second, I express the hope that the always diligent efforts of the Senator from Virginia to bring about a reduction of nonessential Federal expenditures will meet more sympathy this year than they have in the past.

I have repeatedly pointed out that the President of the United States cannot spend any money which has not previously been approved by the Congress; therefore, the Congress cannot dodge its own responsibility by pointing the finger at the President. Nor should it sit back and expect the President to specify the places where all of the reductions can be made.

On the other hand, I place equal emphasis upon the point that the President as the Executive Officer likewise has a responsibility, and he cannot dodge that responsibility by just pointing the finger at the Congress.

The President and his Director of the Budget are in a position to make constructive suggestions as to where expenditure reductions can best be applied, and they have a responsibility to cooperate with the Congress in helping to do so and to support our efforts both publicly and privately.

Congress will not be able to make an effective reduction in expenditures so long as the executive branch keeps insisting that such reductions will destroy the necessary functions of the Government or so long as they keep promising more and more new programs and the expansion of the old ones.

All that we are asking today is that the President give to the Congress the same cooperation which he as the majority leader of the Senate several years ago demanded and expected from the man then in the White House.

Thus far we have not had that support. Why? Why are we not getting that support? Why has the administration decided to delay action on the conference report until after the first of June notwithstanding the fact that 7 weeks have

transpired since this bill was approved by the Senate?

We hear rumors that one of the reasons is that the administration is quietly trying to kill this bill because it fears the political results of cutting expenditures or raising taxes on the eve of an election. Thus far it has refused to accept the proposed $6 billion expenditure reduction. In fact questions are being raised as to whether the administration really wants the tax increase to be effective before the November elections.

One argument we hear as to why action is being delayed is that certain Members of Congress want to postpone a vote on the bill until after their primaries.

Mr. President, I repeat, this is no time for political considerations to enter into the decision as to whether or not there is to be fiscal restraint in this country. We have already witnessed two crises wherein the stability of the American dollar was seriously challenged, and it is the height of folly for this administration to recklessly chance another dollar crisis. Do not forget that we are in the midst of a war even though the administration refuses to recognize it as such.

This bill, embracing a $6 billion expenditure reduction along with a 10-percent tax increase, was passed by the Senate 7 weeks ago. The conference report, which now awaits House action, also embraces the authority for the extension of excise taxes on automobiles and telephone services, both of which expired May 1, and as of today they are, in effect, being collected illegally. The monthly telephone bills will be sent out the first of June, and on these bills the companies should not be expected to collect a tax which has not been approved by the Congress.

Surely they will not let these excise taxes lapse.

Frankly, I too am beginning to wonder if the administration really wants this bill passed or whether it just wants a campaign issue.

The reason this question is being asked is that in the past few days the White House and numerous Cabinet officers in the administration have been leaking so-called unofficial reports to the press as to the dire consequences that would arise from the adoption of the $6 billion spending reduction, which is mandatory under this bill. Each time in listing the agencies and programs that will bear the brunt of the reductions they mention such popular programs as education, cancer and heart research, rural electrification, veterans programs, school lunch and welfare programs, and so forth, all of which have some special appeal. Various agencies in the States are receiving calls from Washington and being urged to contact their congressional Representatives about the threatened cuts in their particular programs.

Listening to this propaganda one would think that all welfare programs were being scuttled.

The Veterans' Administration has been warning the veteran organizations that the VA hospital program could be drastically curtailed; yet the fact is that the bill specifically exempts both veterans and social security recipients from any cutback in benefits under this bill.

To show just how far the administration has gone in spreading this propaganda, I have received several calls from congressional representatives in the area served by the TVA system to the effect that the Budget Bureau is warning the TVA officials that its operations would be seriously jeopardized by the approval of this bill. The threat is even being made that the approval of the $6 billion spending reduction proposal might even prohibit the TVA system from using its accrued revenues from its sale of power to pay the interest and amortization on its outstanding bonds. They are being told that any expansion of the TVA system—such as completing transmission lines, and so forth—would all but stop if this bill passes. This is absurd.

That is just not true any more than are some of the threats they are making in connection with the other emotion appealing programs, and to support this statement I have asked the staff of the Joint Committee on Internal Revenue Taxation to prepare a memorandum spelling out in clear and unmistakable language the manner in which the TVA system would or would not be affected under this conference report.

I ask unanimous consent that this memorandum prepared by Mr. Larry Woodworth, chief of staff of the Joint Committee on Internal Revenue Taxation, be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 4.)

Mr. WILLIAMS of Delaware. Certainly the Budget Bureau, operating under the instructions of the President, could if it so desired practically destroy any Government function and use this $6 billion cut as an excuse. The same point would be true with the $4 billion reduction, or in fact the same action could be taken even if the bill were defeated. The administration can at any time impound the funds or stop the work of any particular Federal program.

Let us face it—all of these scare reports represent backstage tactics on the part of an administration which in effect wants to defeat any plan which would curtail its right to spend the taxpayers' money with a free hand.

Apparently what the Johnson administration really wants is a $10 billion tax increase and no control over expenditures. They want to use this extra revenue not to reduce the deficit but to finance an expansion of this great society spending schemes during this presidential election year. They want to buy another election and pay for it with borrowed money.

Significantly, not one word is mentioned by the administration as to a method for cutting expenses. What about the space program? Why not eliminate or postpone the supersonic transport? Why not curtail our foreign aid program, under which last year in just one country we were financing the cost of such unnecessary items as $2,821.58 for bubble gum, $4,610.51 for outboard motors, and $12,535 for television sets, and spending $8,684.07 for a cocktail party? Do such expenditures take priority over hospital beds for veterans?

Not one word is mentioned by the administration about the possibility of canceling the excessive payments under our agriculture program, the sole purpose of which payments is to pay the corporate-type farming operations not to produce food. Just last year under this subsidy program there were five companies which were paid over $1 million each, 15 operations were paid between $500,000 and $1 million each, and 388 farming operations were each paid between $100,000 and $500,000—all cash payments not to produce crops. These are not farmers cultivating the land; these are individuals reaping a harvest from the Federal Treasury. Why does the administration not mention these programs as places where reductions can be made?

Not one word has been said by the Johnson administration to justify the recent Defense Department's action in awarding a contract for the M–16 rifles to a General Motors subsidiary at a cost of $20 million higher than the lowest responsible bidder. This $20 million unnecessary expenditure on this one contract would more than offset their threatened reduction under the school lunch program. It has been estimated that strict enforcement of the competitive bid system in the Defense Department alone would save $3 billion annually; yet the Johnson administration still insists on awarding Defense contracts on what ofttimes appears to be purely political considerations.

Not one word has been said by the administration about the possibility of canceling the program wherein the Government through grants and low-interest loans is building golf courses all over America. Do golf courses take priority over health and education?

Not one word has been said by the administration about the hundreds of millions of dollars which could be saved by reducing and recalling our troop strength in Europe. I supported NATO; but why should we be required to furnish the majority of the troops when the countries most affected will not make their contributions?

Not one word has been said by this administration about supporting the moratorium on new public works projects until such time as our budgetary conditions are brought under control or the war in Vietnam is over. Quite the contrary, the administration is still initiating new projects as though there were no war and as though our budget were in balance. During World War II and the Korean war there was a moratorium of all new public works projects that were not determined to be essential to our national welfare. Why has the Johnson administration refused to take similar action during the Vietnam war?

Not one word has been said by the administration about the possibility or the necessity of curtailing our space program. Why is it so important to reach the moon when we have more problems right here in America than we can solve?

These are but a few of the many areas where bona fide cuts and reductions in expenditures can be made, and yet not

one of them has been mentioned by any official in the executive branch.

No wonder the question is being asked not only in congressional cloakrooms, but also in financial circles both at home and abroad: Does this administration really want a bill which promotes both fiscal restraint and a tax increase?

This year it is estimated that the Government will close its books with a deficit of approximately $20 billion, and the deficit for fiscal 1969 is estimated at $28 billion to $30 billion assuming no action is taken by the Congress and the administration either to increase taxes or to reduce expenditures.

As a result of the staggering deficits created under this administration during the past 5 years, the cost of living today is at an all-time high and still rising at an alarming rate. Inflation is no longer a threat in America; it is fast becoming a reality. Why does the Johnson administration display so little concern over the plight of the millions of our retired citizens living on social security or private pensions? These elderly people are being pauperized as the result of this uncontrolled inflation.

Welfare recipients, instead of being helped, are being hurt in this inflationary spiral, in that their welfare checks will buy less groceries and less clothing.

Interest rates, which today are at the highest level in the past 100 years and which will go higher unless this conference report or some similar proposal is approved, are hurting every small businessman, farmer, or consumer who is buying appliances, and so forth, on credit.

During the Eisenhower administration, when interest rates were averaging around 4 percent, many Democratic Senators were making almost daily speeches assailing what they referred to as the high-interest rates of that regime. I emphasize that interest rates then were approximately 4 percent. Why are they so strangely silent today, when the interest rates under the Johnson administration are at a 100-year high, or nearly double the top rates of the Eisenhower administration? Have they no concern over today's high-interest rates?

A recent issue of Government bonds paying 6-percent interest has sold below par within the past few days, while the price of gold in the free market has advanced above $40. I point out that it advanced above $42 yesterday. Yet, in the face of all these warnings, we find the Johnson administration and its liberal supporters in Congress still talking in terms of politics rather than in terms of what must be done for the good of our country.

For the past 5 years, both the executive branch and the Great Society liberals in Congress have been clamoring to be the first to endorse new spending programs; yet when the time comes to finance and raise the money to pay for the many spending schemes, the answer of the Democratic liberals and the executive branch is that "to vote for a tax increase and any spending cut would cause acute political problems."

Surely, an increase in taxes and cutting expenditures will hurt, and voting for such a proposal may hurt some Members of Congress politically. But is that so important, when we consider the disastrous results that could follow if the conference report were defeated? Certainly, cutting expenditures will affect some projects in my State, just as it will affect projects in other States. But do not forget that this 10-percent tax increase will likewise hurt 90 million taxpayers. Have they forgotten that we are in the midst of a war, with over a half-million men daily risking their lives? They and their families are likewise making sacrifices.

Last Thursday we were told that 562 Americans lost their lives in Vietnam during the preceding week. This represented a record weekly high for this war. At a time when a half-million American boys are displaying heroic courage while fighting on a foreign battlefield, should the political leaders, both in Congress and in the executive branch, display any less courage in the performance of their duties?

Before rejecting this conference report, let both Congress and the President consider the alternative. The alternative is more inflation with a further deterioration or threat to the stability of the American dollar. Continued uncontrolled inflation represents a direct loss to the millions of retirees who are today living on fixed incomes—pensions, social security, proceeds from life insurance policies, savings accounts, and so forth.

If no action is taken by Congress or the executive branch toward fiscal restraint or control over this inflationary threat, it will mean an increasing cost-of-living and a further reduction in the value of the paycheck of every laboring man and perhaps mean price and wage controls. Can we afford to sit idly by and let this happen?

I am getting a little impatient with some of the flaming liberals of this Great Society who today are so vocal in their denunciation of both the proposed expenditure reductions and the tax increase. Where have they been for the past 15 months? Where were they when this bill was acted upon by the Senate? If they are in favor of increasing taxes but not in favor of tying such an increase to a mandatory expenditure reduction, why have they not introduced their own bill? Not a single bill proposing to increase taxes has been introduced in either the House or the Senate except for the one which Senator SMATHERS and I cosponsored and which was passed by the Senate.

Many of these free-wheeling spenders who today are criticizing the conference report ran like a bunch of scared rabbits when it came time to raise the necessary taxes to pay for the very programs for which they had been voting.

Even today, two of our colleagues as candidates for President are running around the country denouncing both the proposed expenditure reductions and the tax increase, but they were both conspicuously absent when these measures were being voted upon in the Senate. Why were they not here to offer their solutions if they had any?

Our country today faces a staggering deficit that can no longer be ignored, and those both in Congress and in the executive branch who insist upon delay or who fail to support this conference report must stand ready to accept the full responsibility for the next financial crisis—a financial crisis which may very well follow its extended delay or outright rejection. This crisis may be much nearer than many realize.

In my opinion neither Congress nor the administration has any choice except to act and act promptly. This conference report must be acted upon by the House and the Senate without further delay. For once let both Congress and the White House forget political considerations and make a decision on what we all privately admit is in the best interest of our country.

Congress should not adjourn for the Memorial recess without having acted upon this conference report.

EXHIBIT 1

[From the Wall Street Journal, May 16, 1968]

HOUSE DEMOCRATS DELAY TAX VOTE UNTIL EARLY JUNE—OPPOSITION TO A $6 BILLION SPENDING CUT IS CAUSING ACUTE POLITICAL PROBLEMS—TIME NEEDED TO RALLY FORCES

WASHINGTON.—The House Democratic leadership postponed until at least early June a showdown vote on the bitterly controversial higher income-tax and spending-reduction legislation.

Majority Leader Albert of Oklahoma didn't give any reason for the delay as he announced the decision last night. The decision was reached after consultation by the Democratic leadership with Rep. Mills (D., Ark.), chairman of the House Ways and Means Committee.

It was apparent, however, that the main reason lay in the severe political problems confronting the legislation.

Rep. Albert said the vote would be put off until after the Memorial Day weekend. He offered no promises on exactly when it would be brought up.

Most House Democratic Liberals are firmly opposed to the $6 billion budget cut attached by a conference committee to the 10% income-tax surcharge plan. These Liberals vow to vote against the package, and apparently the only thing that may sway them is a concession by President Johnson to accept such a slash in his proposed $186 billion budget for the year beginning July 1. Mr. Johnson has bitterly opposed a $6 billion cut, saying that he would only reluctantly accept a reduction of $4 billion.

The intense opposition by many Democrats, in turn, is making it difficult to round up needed House Republican votes for the package. Though the GOP leadership has endorsed the plan, a number of rank-and-file members assert that they won't vote for it unless a majority of Democrats do.

This has led to a standoff, and a spate of rumors are abroad in the House concerning the bill's likely fate when it finally is brought to a vote. The best bet is that neither side currently has the votes in hand to win. Thus, the delay is acceptable to both sides while they attempt to rally a majority to their position.

DON'T WANT TO KILL PLAN

Most Democrats opposing the $6 billion spending reduction don't want to kill the legislation. Rather, they hope to send it back to the conference committee with instructions to return the surtax with only a $4 billion spending cut attached to it.

Their difficulty is that such a motion probably would be opposed by almost all Republicans. With Rep. Mills backing the $6 billion reduction, it may be difficult to muster enough Democratic votes to carry a "recommital" motion. If the motion did fail, the parliamentary rules would require an immediate vote to approve or reject the whole package.

There is a considerable question whether the surtax and $6 billion cut would be approved if the Democrats lost their bid for a smaller spending reduction. Some House members who are deeply involved in the maneuvering assert that the package can be passed only with open Presidential support.

Yet there is intense opposition within the Administration to the $6 billion reduction, and some officials are hinting that the President might veto the package unless the spending cuts are scaled down. Moreover, the AFL–CIO has opened a lobbying campaign against the legislation in its current form, and an intense effort by the labor federation could further weaken the bill's chances in the House.

ADVICE FOR JOHNSON

On the other hand, the President is receiving advice from some officials and Democratic lawmakers to accept the $6 billion budget cut along with the surtax. Among other things, they are *advising* Mr. Johnson that he could simply disregard the spending restrictions and let a new President cope with the problem next January. A White House source said President Johnson hadn't yet made up his mind how to handle the thorny issue.

The prospect of further delay and uncertainty about the fiscal package is understood to be "disturbing" monetary authorities, but it isn't clear if this fresh setback on the road to fiscal restraint would be enough to prod the Federal Reserve Board toward another increase in its bellwether discount rate. There's been some speculation outside the board that such action would be likely next week if the tax-budget plan weren't making clear headway toward enactment.

With the rate already at 5.5%, the highest since 1929, however, the authorities are apt to be hesitant to boost it again soon unless this would seem necessary to prevent loss of momentum in the general upward movement of interest rates. As of yesterday, the rise in Treasury bill yields and other sensitive short-term rates didn't signal any immediate need for another "kicker," one observer said.

Basically, the Federal Reserve is believed to have been pursuing its tight money policy since last November as if fiscal restraint weren't in prospect. Thus an abrupt further tightening wouldn't necessarily follow even clear-cut Congressional killing of the measure unless this event touched off a sudden withdrawal of capital from the U.S. by nervous foreigners.

Delay of the legislation won't affect the timing of the surtax if it's finally enacted. The legislation specifies that the tax would be retroactive to April 1 for individuals and to Jan. 1 for corporations. Individuals would pay a 7.5% surcharge this year and corporations 10%. The legislation would allow the tax increase to lapse June 30, 1969. Thus, both individuals and corporations would pay a 5% surtax in 1969 unless Congress extended the levy.

[From the Washington Evening Star, May 16, 1968]

GOLD PRICE HITS NEW HIGH AGAIN IN LONDON, PARIS

(By the Associated Press)

The price of gold shot up again today by 60 cents to a new high in London of $40.85 an ounce. But there was no suggestion of a new gold rush. Most hoarders were simply holding on and refusing to sell.

The foreign-exchange rates for the pound and the dollar remained steady while gold rose—a sure sign that speculators were not switching out of paper money into gold on a large scale as they did in the financial crisis earlier this year.

French bullion dealers attributed the continued rise in gold prices to the scarcity of the precious metal on free markets.

The Paris fixing at the equivalent of $41.40 an ounce, an increase of $1.10 from the previous level, is the highest ever except for the frantic session of March 15 when Paris was the only market operating and the price reached $44.36.

[From the Washington Evening Star, May 16, 1968]

FIVE HUNDRED AND SIXTY-TWO U.S. DEAD HIGHEST OF ANY WEEK IN WAR—REDS ATTACK NORTH OF SAIGON AND IN CENTRAL HIGHLANDS

SAIGON.—North Vietnamese troops launched strong attacks today north of Saigon and in the Central Highlands as the U.S. Command announced that more American soldiers were killed in combat last week than in any week of the Vietnam war.

U.S. Command said 562 Americans were killed; 19 more than the previous record in the week of Feb. 11–17. The U.S. Command reported 5,552 enemy killed last week, no record, while South Vietnamese headquarters said 675 government troops were killed, their third highest weekly toll of the war.

A U.S. spokesman said much of the American death toll resulted from heavy action in the northernmost provinces, where U.S. Marines fought several battles last week around Dong Ha, 11 miles south of the demilitarized zone. The week also saw hard fighting in and around Saigon as American and South Vietnamese forces crushed the second enemy offensive within four months against the capital.

EXHIBIT 2

THE BUDGET MESSAGE OF THE PRESIDENT

BUDGET OUTLAYS

[Fiscal years. In billions]

Function	1967 actual	1968 estimate	1969 estimate
EXPENDITURES			
National defense	$70.1	$76.5	$79.8
Excluding special Vietnam	(50.0)	(52.0)	(54.0)
International affairs and finance	4.1	4.3	4.5
Excluding special Vietnam	(3.7)	(3.9)	(4.0)
Space research and technology	5.4	4.8	4.6
Agriculture and agricultural resources	3.2	4.4	4.5
Natural resources	2.1	2.4	2.5
Commerce and transportation	7.3	7.7	8.0
Housing and community development	.6	.7	1.4
Health, labor, and welfare	39.5	46.4	51.9
Education	3.6	4.2	4.4
Veterans benefits and services	6.4	6.8	7.1
Interest	12.5	13.5	14.4
General government	2.5	2.6	2.8
Allowances:			
Civilian and military pay increase			1.6
Contingencies		.1	.4
Undistributed intragovernmental payments:			
Government contribution for employee retirement (—)	−1.7	−1.9	−2.0
Interest received by trust funds (—)	−2.3	−2.7	−3.0
Total expenditures	153.2	169.9	182.8
Total expenditures, excluding special Vietnam	(132.7)	(144.9)	(156.5)
NET LENDING			
International affairs and finance	.5	.7	.7
Agriculture and agricultural resources	1.2	.9	1.1
Housing and community development	1.7	3.3	1.4
All other	1.7	.9	.1
Total net lending	5.2	5.8	3.3
Total outlays	158.4	175.6	186.1
Total outlays, excluding special Vietnam	(137.9)	(150.6)	(159.8)

EXHIBIT 3

HON. PERCIVAL F. BRUNDAGE,
The Director of the Budget,
Washington, D.C.

MY DEAR MR. BRUNDAGE: I have noted with satisfaction your testimony before the House Appropriations Committee on March 6 that you, as Budget Director, have requested all agencies of the Government to submit to you suggestions to reduce the monstrous budget which was submitted to the Congress.

There is not much reason to hope that these agencies will voluntarily recommend that their appropriations be reduced; yet this action, at least, indicates an awareness by the Budget Director of the growing discontent among the people because of the bigness of the pending budget.

I am also encouraged to note that the President, in his press conference yesterday, indicated a study to delay some construction programs included in the budget.

I have never contended that the executive branch must bear the sole responsibility for excessive public spending. The Congress and the people who have heretofore supported heavy spending must bear their share of the blame, but I do think the executive branch has the first responsibility, namely, under the law, to originate a budget, adhering to economy and avoiding waste, and to provide only for the essential functions of government.

For the first time in my 24 years of service in the Senate, I see the people themselves, throughout the Nation, aroused and demanding retrenchment in Government spending. This being a democracy, the Congress is anxious to follow the public will and vote for retrenchment, but the leadership of the executive branch is essential for full success, because it is an overwhelming task to reduce by amendments the 550 executive accounts, many of which do not even appear in appropriation bills.

Such leadership, let me remind you, was given by President Eisenhower in the past. In 1953, when the President took office, he was confronted with a Truman-prepared budget of $78.6 billion. The President, with the aid of Congress, reduced the Truman budget to $67.8 billion, a reduction of over $10 billion in expenditures. What was done then can be done now, if there is the will to do it. I do think, however, and I am writing you with the utmost frankness, that you, as Budget Director, owe a justification to Congress and to the people in that you presented to the President an expenditure budget of $71.8 billion, which is $3 billion in excess of fiscal 1957, and $7 billion in excess of fiscal 1955.

The major increase is not in defense but in domestic-civilian expenditures. What are the present conditions, either at home or abroad, that justify an increase in spending of $7 billion more than in 1955?

Again, I note that in 1954 we spent $3 billion more on defense than you recommend in the present budget. Therefore, this would indicate that the need for defense spending is not as great now as in 1954.

I ask you further to justify the 13 additional State and local grants, making 67 in all, as provided in the pending budget. All of these new State and local grants will grow and grow, and especially the appropriation for local school construction will open up a Pandora box of spending, amounting in future years to billions and billions of dollars.

Although the number of civilian employees is 2,389,792, plus 273,674 foreign nationals not on regular payrolls, your budget creates 31,500 new civilian jobs. I ask you whether a survey was made of civilian employment, which is one of the most fertile fields for retrenchment.

I note you hope that the budget for the following year will not be increased, yet this is inconsistent with your budget recom-

mendation, authorizing nearly $2 billion in excess of expenditures for the coming fiscal year. This would certainly indicate plans for increased spending in the fiscal year thereafter.

This is a luxury budget, padded with increased spending all down the line and has been so denounced by the Secretary of the Treasury, Mr. Humphrey, in even stronger language than I have used.

Passage in its present form will certainly stimulate a new inflation which is beginning rapid growth. It will be another favor in increasing the cost of living. The budget now pending may be our last chance to reduce entrenched spending. Enactment of this expanded budget, under present conditions, will mean we are indefinitely committed to more and more spending.

When tax relief is so urgently demanded by the overburdened taxpayers, the passage of this budget at its present level will make impossible any tax reduction in the foreseeable future.

The claim that the present budget is balanced by revenue is more apt to be wrong than right. You assume that the Congress will pass the 5-cent postal-rate bill, which is estimated to bring in upward of $700 million of new revenue, and that this, together with an anticipated increase in the income-tax receipts, as reflected by an increased national prosperity above 1956, will be sufficient to balance the expenditures.

As Congress has not taken action to increase the postal rates to 5 cents, and, as there is strong evidence that business conditions are leveling off, there is no certainty that your anticipated increase in tax revenue will be realized and a Federal deficit avoided.

I have grave apprehensions that to continue much longer our present tax system will have disastrous results, but tax reduction can only come by reducing Federal expenditures. The total tax take by the Federal, State, and local governments amounts to approximately $110 billion a year, and I give below a detailed statement:

In re tax collections: Federal, State, and local

[In millions]

Federal:	
Net budget receipts, fiscal year 1958	$73,620
Employment taxes:	
Social security	6,609
Federal disability	826
Railroad retirement	665
Total employment taxes	8,100
Highway trust fund tax collections	2,173
Total, Federal	88,893
State and local:	
State (1956, latest figure)	13,325
Local (1955, latest figure)	11,886
Total, State and local	25,221
Total, Federal, State, and local	109,114
State unemployment insurance tax collections deposited with Federal Government	1,480
Total, Federal, State, and local, including State unemployment tax collections	110,594

NOTES.—1. State and local figures exclude revenue from sources other than tax collections totaling $11 billion. 2. State and local figures are net of intragovernmental revenues. 3. Federal figures exclude certain trust funds and net receipts of business enterprise funds. They represent net budget receipts.

To complete our fiscal picture, let me point out that if the pending budget is adopted, appropriations and authorizations for expenditure would be available as of July 1, 1957, as follows:

	Billions
Direct budget appropriations in fiscal 1958	$73.3
Appropriations to Federal road trust fund	2.2
Unexpended balances of funds already appropriated	46.0
Authorizations already enacted to spend from so-called debt receipts, and from other sources	24.0
Total	145.5

These figures do not include various trust funds such as social security, etc.

The Federal debt is $276 billion. The contingent liabilities by guaranties of various Federal borrowing programs is $260 billion.

Our national income in 1956 was $325 billion, so our various governments are collecting in taxes in cash more than one-third of the national income.

I do not believe the free enterprise system can long survive under such tax burdens. Most corporations now pay taxes, in all forms—Federal, State, and local—of more than 60 percent of their net revenue, and some individuals pay over 90 percent.

In the face of these conditions, it is foolhardy in the extreme to continue to spend on this high level.

As chairman of the Joint Committee on Reduction of Nonessential Federal Expenditures, I ask you for a detailed report of the economies actually made effective by adoption of the recommendations of the Hoover Commission. President Hoover has stated that the recommendations of the Hoover Commission point the way to saving in governmental expenditures $5.5 billion annually.

I have been unable to find in the budget where any of these recommendations have been incorporated. I would like to be enlightened as to this.

I firmly believe the pending budget should be reduced by at least $5 billion, and this would leave an expenditure budget $2 billion more than 1955.

I hopefully await the results of your investigations and word from you and the President as to how the pending budget can be reduced.

Cordially yours,

HARRY F. BYRD.

EXHIBIT 4

JOINT COMMITTEE ON
INTERNAL REVENUE TAXATION,
Washington, D.C., May 16, 1968.

Hon. JOHN J. WILLIAMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: I am replying to your telephone inquiry as to the application of the proposed expenditure reduction to an agency such as the TVA which to some extent at least generates its own revenues.

Expenditures by the TVA (on a net basis insofar as power revenues are concerned) are included in the unified budget. For that reason, expenditures by the TVA could be made subject to some portion of the $6 billion expenditure reduction. The question as to which agencies some portion of the $6 billion reduction would apply is determined by the action taken by Congress with respect to appropriations and other provision for obligational authority. To the extent the action by Congress may not fully account for a $6 billion reduction in expenditures, it would be up to the President to determine the allocation of any additional reduction necessary to achieve the $6 billion goal. He could presumably do this by reducing specific programs or on an overall basis by requiring agencies to make some percentage reduction (perhaps only with respect to controllable programs). As a result, he could, but would not be required to, allocate some of this reduction to the TVA. He could do this in a manner which would permit TVA to offset any reduction it otherwise might have to make in expenditures by any increase in power receipts which it receives. On the other hand, he could make the allocation without regard to an increase in power revenues.

The provision relating to employee reductions does, under the conference agreement, apply to the TVA. In other words, the TVA in the case of its permanent, full-time employees would be permitted to fill three vacancies out of four until such time as the level of employment generally reached the level of June 1966. In the case of temporary or part-time employees, they would be limited to the same number they had in the corresponding month in 1967. However, either in the case of permanent full-time employees or in the case of part-time or temporary employees the Director of the Bureau of Budget could reassign vacancies to be filled to the TVA from some other agency, if he found this necessary or appropriate to increase the efficient operation of the government.

To summarize, no part of the proposed $6 billion reduction in expenditures would have to be assigned to the TVA, although the President in his discretion could so assign some portion of the reduction. The employee reductions would, if no action is taken to the contrary, affect the TVA, but the Director of the Bureau of the Budget could prevent any such reduction by reassignment if he considered it necessary or appropriate to efficient government operation.

Sincerely yours,

LAURENCE N. WOODWORTH.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. BAKER. Mr. President, I commend the distinguished Senator from Delaware on his remarkable presentation and his cogent and effective criticism of the present posture and status of the fiscal situation in this country.

As always, he has done a magnificent job in this analysis, and has given all of us the basis for judging the next steps in and the necessities of a dangerous situation.

I especially at this point wish to underscore briefly the fact that I understand that there have been a number of calls by administration officials to many Members of Congress—I know there has been a call to this Member of Congress pointing out that funds for the Erlanger Hospital in Chattanooga would be cut or would not be funded in fiscal 1969 until "the Congress was able to work out what it is going to do" about this expenditure reduction-tax increase thing. This is from a representative of HEW in a call to my office on Friday, May 17.

I make no criticism of the administration in this respect, except to say that the time has come, in my judgment, when the executive department must specify the cuts, in the best and the least disruptive manner, that will accomplish the purposes of this obviously needed reduction in expenditures and increase in taxation.

On one other subject, I thank the Senator from Delaware for pointing up the situation with respect to TVA. This is not a case of asking that TVA be excluded. On March 29, 1968, I introduced, and the Senate adopted, an amendment that made it abundantly clear that the

internal funds of TVA, generated from power operations, the sale of power bonds and notes, were not affected, because they are not part of the administrative budget. This, I understand, has been stricken in conference.

I thank the Senator from Delaware for once again, with his letter from the staff of the Joint Economic Committee, making it abundantly clear that TVA's internal funds, power funds, revenues from the sale of bonds and power notes, are not affected by the proposed decrease in expenditures.

Mr. WILLIAMS of Delaware. They are not affected any more than they would have been under the proposed $4 billion reduction or, for that matter, under existing law except as to degree. I quote from the last paragraph of the letter just placed in the RECORD.

To summarize, no part of the proposed $6 billion reduction in expenditures would have to be assigned to the TVA, although the President, in his discretion could so assign some portion of the reduction.

That also would be true of the $4 billion. It could be true of the existing law, if we assume that we killed the conference report and made no reductions. In approving this reduction we specifically made no exceptions but left to Congress and the executive branch an opportunity to work out the system of priorities, as to where they will apply the reductions, as the Senator knows.

The bill did spell out, however, that social security payments and veterans' benefits as provided under existing law would not be affected, but these were not considered exceptions since they were already mandatory. The bill did provide that the special costs of the Vietnam war and the interest on the national debt would not be included since they were both recognized as uncontrollable items.

I thank the Senator for his remarks, and I thank him for calling attention to the particular project in his State with respect to which he received notice that it would be canceled if we retained the $6 billion expenditure reduction. I am aware of the fact that many Members of Congress are receiving such calls. I have received some calls from agencies in our State that they are receiving notice from Washington that if expenditures are reduced by $6 billion their programs will be cut by x amount. This practice is nothing but an indirect attempt on the part of the administration to defeat a bill which it does not have the courage to face up to in an election year.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, which will be stated by title for the information of the Senate.

The BILL CLERK. A bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

ORDER OF BUSINESS

Mr. McCLELLAN. Mr. President, I yield 7½ minutes to the Senator from Virginia [Mr. BYRD].

Mr. TYDINGS. Mr. President, I yield a like amount of time to the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, I express my appreciation to the Senator from Arkansas and the Senator from Maryland for yielding to me.

Mr. President, I ask unanimous consent that I may speak on a subject which is not germane.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JORDAN of North Carolina. Mr. President, will the Senator from Virginia yield to me for 1 minute?

Mr. BYRD of Virginia. I yield 1 minute to the Senator from North Carolina.

AMENDMENT OF THE FOOD STAMP ACT OF 1964

Mr. JORDAN of North Carolina. Mr. President, on Friday, May 17, the Senate passed S. 3068. The bill was reported from the Committee on Agriculture and Forestry without amendment, and was passed by the Senate without amendment. However, there was a mistake in printing the bill, as reported, so that as printed it differed from the bill as introduced.

In order to correct the RECORD, I ask unanimous consent that the vote by which S. 3068 passed the Senate on Friday, May 17, be reconsidered, together with the third reading; that the bill be amended by striking from line 5, page 1, the figure "$255,000,000" and inserting in lieu thereof "$225,000,000"; and that the bill be read a third time and be repassed.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

The bill (S. 3068), as amended, read the third time, and passed, is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (a) of section 16 of the Food Stamp Act of 1964, as amended, is amended by deleting the phrase "not in excess of $225,000,000 for the fiscal year ending June 30, 1969;" and inserting in lieu thereof the phrase "not in excess of $245,000,000 for the fiscal year ending June 30, 1969;"

EAST-WEST TRADE

Mr. BYRD of Virginia. Mr. President, a subcommittee of the Committee on Banking and Currency will begin hearings tomorrow on a Senate joint resolution relating to East-West trade. The resolution offered by the Senator from Minnesota [Mr. MONDALE] states:

Public misconceptions plague efforts to expand East-West trade.

And it resolves that the Export Control Act regulations and the Export-Import Bank finance restrictions should be modified to permit an increase in trade between the United States and the nations of Eastern Europe.

As a businessman, and as one who through the years has been an exporter, I believe strongly in the elimination of trade barriers wherever possible.

I think it important that there be trade between the nations of the world. I favor trade.

One of the businesses in which I am involved, the growing and selling of apples, tends to prosper when there are good export possibilities, and it suffers in those years when the export volume is small.

So I do not speak as one who is hostile to trade among the nations of the world. I speak as one who favors trade among the nations.

Now, the Senator from Minnesota in his address to the Senate on May 9 when he presented Senate Joint Resolution 169, made a sharp attack on legislation which I introduced last August and which the Senate approved last August, and which the House of Representatives likewise approved. He made a sharp attack, too, on legislation offered by the Senior Senator from South Dakota [Mr. MUNDT], of which I was cosponsor.

In adopting the Byrd amendment to the Export-Import Bank Act, the Senate simultaneously did two things: First, in a sharp, clearcut fight, it voted to limit the President's authority and thus asserted its own constitutional prerogative in the field of foreign affairs; and, second, it made unmistakably clear that American tax dollars shall not be used for the benefit of nations supplying our enemy.

This amendment, along with the Mundt-Byrd amendment, prevented the use of Export-Import Bank funds to build or equip a Fiat automobile plant for the Soviet Union.

Bear in mind, Mr. President, that Export-Import Bank funds are funds which come from the pockets of the taxpayers, from pockets of the wage earners of the United States.

The Byrd amendment would prohibit the use of tax funds to finance trade with nations supplying North Vietnam—so long as North Vietnam is at war with the United States.

It would automatically cease to be operative with the ending of the Vietnam conflict. Nor would the legislation enacted by the Congress apply to trade with any nation except those nations which supply an enemy at war with the United States.

This amendment does not restrict trade.

It says the American wage earner's dollar that he pays to the Government in taxes shall not be used to finance trade with those nations which are supplying the American enemy. Trade can continue, but the American taxpayer will not finance it.

The Senator from Minnesota in his Senate speech said:

The harshest restrictions (the Byrd Amendment and the Mundt-Byrd Amendment) coming from Congress have ended Export-Import Bank assistance for exports to Communist countries.

I say again, Mr. President, why should American tax money be used to finance trade with countries—be they Communist or non-Communist—which are supplying North Vietnam?

Let us put this matter in perspective. The United States is involved in a major war in Vietnam.

The United States has 500,000 American troops fighting in Vietnam, and through May 11 our casualties totaled 165,483.

During the 2-year period 1966 and 1967, U.S. casualties totaled 106,000 or an average of 1,000 per week.

For the first 19 weeks of 1968, the United States has suffered 48,560 casualties in Vietnam, or an average of 2,500 casualties a week.

Without aid from the Soviet Union and the Communist bloc countries, North Vietnam would not be able to continue the war against the United States.

The Soviets supply almost all of North Vietnam's surface-to-air missiles, radar, rockets, mortars, fighter aircraft and antiaircraft guns and ammunition.

The basic weapon of the Vietcong, the AK–47 automatic rifle, is made in Czechoslovakia. That weapon has been judged by our own military men to be as good or better than the M–16 rifle carried by most of our own troops in Vietnam.

Among European Communist countries, Poland is second only to the Soviet Union in the number of ships carrying cargo to North Vietnam.

Why should the American taxpayer, whose sons and brothers and husbands are being wounded and killed daily in South Vietnam have their own money used to finance trade with those nations which are supplying war materials and other cargo to the North Vietnamese?

I realize that some American companies are having their profits reduced because of the Byrd amendment approved by the Congress last year.

But where American lives are involved, I am not concerned about business profits.

Another point the Senator from Minnesota makes is that the Byrd amendment eliminated the President's discretionary authority.

Most certainly it did.

I say the Congress of the United States—the Senate of the United States—has surrendered too much to the President—be he Democrat or Republican. The Senate should cease giving blank checks to the President.

I say it is time that the Senate and the Congress began to correct the imbalance which exists between the executive and the legislative branches.

The Byrd amendment was adopted by the Senate by a vote of 56 to 26. I might say that arrayed against it on that 10th day of August of last year was the full power of the White House and the State Department.

Yet the amendment was approved with 66 percent of the Democrats voting in favor of it and 72 percent of the Republicans voting favorably. It was passed by a bipartisan vote.

It was clear last August and it is clear today that powerful men in our Government—powerful businessmen with millions of dollars at stake—are opposed to the Byrd amendment and sought its defeat and now, presumably, seek its repeal.

The chairman of the Banking Committee in the House of Representatives, an opponent of the Byrd amendment, said last August in a surprisingly frank public statement that he was depending on what he called the "fat cats," presumably wealthy businessmen, to bring enough pressure to kill the Byrd amendment.

They may be able to do that.

The speech by the Senator from Minnesota is the opening gun to make it possible to use American tax dollars to finance trade with Communist nations supplying North Vietnam.

I do not underestimate the power of the administration.

I do not underestimate the power of those whom the chairman of the House Banking Committee calls "fat cats."

But I say this, that if the American people understand that the tax dollars taken out of their pay checks—withheld from their wages even before they see their wages—are being used to finance trade with a nation which is inflicting on the American people 2,500 casualties every week, then I say the American taxpayers will rise up and defeat the "fat cats."

I say again, as I said in the beginning of my speech: I favor trade. I favor the expansion of trade. I favor the nations of the world having as much commercial intercourse with one another as is possible.

The Byrd amendment does not prevent trade. It does, however, prevent the use of American tax dollars to finance trade with nations supplying our enemy.

Until the Vietnam war is concluded, I shall fight to retain this restriction.

Mr. DOMINICK. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I am happy to yield to the Senator from Colorado.

Mr. DOMINICK. I congratulate the distinguished Senator from Virginia on the speech he has just made. This subject has been a continuing source of concern to me, as I am sure it is to many of us, as evidenced by the support of the Senator from Virginia received on his amendment.

I believe I saw in the newspapers the other day that the Commerce Department had issued either a permit, or rules and regulations, which would authorize a permit for the United States to go ahead with the financing of the Fiat plant in the Soviet Union. Is that correct?

Mr. BYRD of Virginia. Not precisely so. I think what was done was that the Commerce Department granted an export license to permit the exporting of machine tools, but there will be no Government financing involved. I think that is the distinction, which comes about as a result of the amendment the Senate adopted, which the able Senator from Colorado himself was so helpful in having adopted. Because of that amendment, the Export-Import Bank is prevented from helping to finance the deal.

My understanding is similar to that of the Senator's, that the Commerce Department has granted an export license to the Soviet Union for the building of the Fiat automobile plant, but the American taxpayer cannot help to finance it as long as the amendment continues on the statute books.

Mr. DOMINICK. Again I congratulate the Senator from Virginia on having been able to stop the use of tax funds in connection with the construction of this plant. But I must say that, at a time when we are engaged in war in Southeast Asia, for U.S. industry to send machine tools to the Soviet Union for construction of the Fiat plant, which will be fully capable of building Fiat trucks as well as cars, it seems to me we are being awfully shortsighted; that in the desire to make more American dollars we are losing sight of our overall national interest.

I sincerely trust that the Senator from Virginia will continue his valuable efforts along these lines which I wholeheartedly support. Perhaps, over a period of time, with enough publicity given this matter, the American people will insist upon governmental action which will back up the theory behind the Senator's amendment.

Mr. BYRD of Virginia. I greatly appreciate the comments of the able Senator from Colorado. I am grateful for them. I concur wholeheartedly in what he says.

Why should any American company, when the United States is at war, and we are suffering 2,500 casualties every week, export tools and other equipment to the Communist nations which are supplying the enemy and making it possible for North Vietnam to continue to kill American soldiers in South Vietnam?

I express my deep appreciation to the Senator from Colorado. I feel that what he has said will be tremendously helpful in the fight to protect Americans in South Vietnam.

Mr. DOMINICK. Like the Senator from Virginia, I am in favor of trade among nations, particularly when trading between private investors here and private investors and individuals abroad. But, is it not a fact, in connection with Communist-controlled countries, that one does not trade in that manner, it is trade only between individuals and businesses here and the Government-controlled corporation run by the Communists in the satellite countries or in the Soviet Union where there are no private business leaders with whom we can trade?

Mr. BYRD of Virginia. The Senator is completely correct. The governments of those Communist countries control the trade. They say how it will be utilized. We know that it will be utilized to their own advantage in this case, which will mean it will be utilized to the disadvantage of the United States.

Mr. DOMINICK. I thank the Senator.

Mr. BYRD of Virginia. I appreciate the Senator's comments very much.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice sys-

tems at all levels of government, and for other purposes.

Mr. McCLELLAN. Mr. President, I send to the desk four amendments and ask that they remain on the desk during the day until we can conclude with some voting.

The PRESIDING OFFICER. The amendments will be received.

Mr. McCLELLAN. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Rolland Truman, court commissioner, Long Beach, Calif.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SUPERIOR COURT,
Long Beach, Calif., May 2, 1968.

Hon. JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: All of our law-abiding citizens, including innocent children, are indebted to you for your tireless efforts to swing back the pendulum of justice to at least a middle-of-the-road course so that our U.S. Supreme Court decisions will no longer be in favor of the criminals. Your two-fisted fighting leadership in this matter is greatly appreciated.

May God bless you with success in having the Senate approve the controversial Title II of the Anticrime Bill, as reported in today's issue of the Los Angeles Times.

Sincerely yours,

ROLLAND TRUMAN.

Mr. McCLELLAN. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the chief justice of the Supreme Court of Pennsylvania, the Honorable John C. Bell, Jr.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SUPREME COURT OF PENNSYLVANIA,
Philadelphia, Pa., April 9, 1967.

Senator JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I enthusiastically endorse your attempts and your proposal to overturn recent Supreme Court decisions invalidating, on recently created technicalities made of straw, voluntary confessions which are made by brutal criminals. These technicalities which four Justices of the Supreme Court of the United States have declared to be unconstitutional, drastically weaken the protection of the law-abiding public from murderers, robbers, rapists and other dangerous criminals, and make a travesty of Justice.

Sincerely yours,

JOHN C. BELL, Jr.,
Chief Justice.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there be a brief quorum call, the time to be equally divided between sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate go into executive session for 2 minutes, the time to be equally divided between the two sides, to consider a nomination on the Executive Calendar.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered. The clerk will state the nomination.

SECURITIES AND EXCHANGE COMMISSION

The bill clerk read the nomination of Manuel Frederick Cohen, of Maryland, for reappointment as a member of the Securities and Exchange Commission for a term of 5 years.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

The PRESIDING OFFICER. Who yields time? The time will have to be charged equally against both sides, unless someone takes it.

Mr. McCLELLAN. Mr. President, I understand the Senator from Maryland [Mr. BREWSTER] wishes 5 minutes. I yield the Senator 2½ minutes.

Mr. TYDINGS. I yield my colleague an equal amount of time.

THE CRIME PROBLEM IN WASHINGTON

Mr. BREWSTER. Mr. President, yesterday, a group of women whose husbands drive buses for the D.C. Transit Co. visited me in my office. They were upset, and justifiably so. A busdriver was killed in this city last week. On that same night, five others were held up. The women who came to see me were alarmed and frightened. They demanded that something be done to help protect their husbands on their jobs.

I have written to the president of the D.C. Transit Co., and to the Mayor of the District of Columbia, urging their prompt action on some of the improvements in law enforcement and protection that the women suggested.

The dangers that bus drivers face in this city every night are just part of the problem. Crime, in fact, is a serious and growing problem in Washington.

It is shocking and deplorable that this should be the situation in the Nation's Capital. But it is.

Despite the best efforts of the police department, crime flourishes here.

Despite comments to the contrary by some public officials who have seriously misjudged the situation, the citizens of Washington and its suburbs lack confidence in the ability of an overworked, undermanned, and underpaid police department to protect life and property here.

It was with surprise and concern that I noted a statement made last week by one of the junior members of the House District Committee, who happens to come from the State of Maryland. He said that the Washington community can feel a considerable degree of confidence that law and order will be maintained.

That statement was made last Thursday. That night, a busdriver was killed and five others were held up. That day and night, six fires of suspicious origin were reported in the city.

Mr. President, can a busdriver feel confident as he drives his route, when one of his coworkers has been slain and others are the victims of holdups almost every night?

Can a merchant feel confident behind the counter in his store when four others like him have been killed in the last month?

No citizen can feel confident in a city that is plagued day and night by shootings, holdups, assaults on women, cases of arson, and assorted other crimes that continue despite the best efforts of the police to prevent them.

This is no time for expressions of confidence. It is time for expressions of deep concern as well as concerted action.

The police department is striving valiantly to control the crime situation in this city. Its officers and men deserve the highest commendation for their efforts under extremely difficult conditions.

Clearly, the best deterrent to crime is the policeman on the street. It is essential that more policemen be put on the streets of Washington as soon as possible.

The fact remains, however, that there simply are not enough policemen in Washington. The force is seriously undermanned. The vacancies that exist on the force now must be filled. The authorized strength must be increased, and then the new positions must be filled.

This is the only way that Washington can begin to come to grips with its crime problem quickly and effectively.

The officials of this city already have taken several steps to put more men on the streets and to increase the protection on the buses. The public safety director said last week that the city is reviewing the possibility of obtaining more policemen.

It is my hope that city officials will come to a decision quickly on this matter. They should come to Congress with a request for an increase in the authorized strength of the police department. Congress should approve that request without delay.

Along with more men, Congress must

assure that the members of the police department continue to receive salaries that are equal to the duties they must perform. The Congress has approved an increase in police salaries this year. Concern for the working conditions of the policemen in Washington must be continuous.

Mr. President, the Washington Post and the Washington Star, on May 18, both contained editorials addressed to the subject I have discussed.

I ask unanimous consent to have printed in the RECORD an editorial entitled "Needed: More Protection," published in the Washington Post of May 18, 1968, and an editorial entitled "Safety on the Buses," published in the Washington Evening Star of May 18, 1968.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Post, May 18, 1968]

NEEDED: MORE PROTECTION

The fear and frustration which has so suddenly gripped Washington bus drivers is shared in large measure by other segments of the Washington community. There is a widespread feeling that the city is not getting the protection it needs. Are there enough police? Is enough use being made of the right kind of protective devices in shops, buses or taxis? The feeling of a lot of people is that the answer to both questions is No. This feeling comes in part as an aftereffect of the breakdown of law and order during the riots, but it also stems from a continuously increasing rise in serious criminal activity over the years. Housebreaking, auto thefts, robberies and larcenies averaged about 900 a week earlier this year. They now average over a thousand a week.

Certainly after six holdups and the murder of a bus driver in one night, the city must provide the added protection demanded by the bus drivers. The temporary manpower available through massive extensions of overtime, announced yesterday by Deputy Mayor Fletcher, should help relieve the immediate emergency. But if the city is to serve those other segments of the community whose fears are just as real as those of the bus drivers, the police force must be enlarged, and enlarged substantially. The police acted with admirable speed and efficiency last night in apprehending three suspects. Even before yesterday's shooting, police had assigned a special task force of plainclothesmen to ride buses in the high hazard areas of the 9th, 11th and 14th precincts of the Northeast and Southeast sectors of the city. Their effort has been rewarded with several arrests. But a concomitant result has been that already inadequate police forces have been spread even thinner. And as the murder at 20th and P only serves to show, the pattern of criminal attack is far from predictable. The only relief for this uneven balance, then, is to increase police ranks. This must be an issue of priority for city and government officials.

As to the physical protection which the bus drivers seek, there are any number of devices which might help deter criminals, such as shatterproof plastic cages for drivers or two-way radios for quick communication. District buses are equipped with machines that collect fares which are inaccessible to the driver except by key. The Transit Commission might well insist that the contents of these machines be completely inaccessible, even to drivers, and that drivers on "owl" runs be prohibited from carrying money on their person, thus removing the bait for criminals. To effect this, the Commission could insist that passengers on night buses pay exact fares. Tokens might be sold at stores and restaurants to relieve the driver of the necessity of handling money.

A high proportion of robberies occur at bus terminal points. Schedules could be altered to prevent layovers, or terminals themselves might be relocated in areas where police can more easily provide protection.

Whatever the solution, the bus drivers, the merchants and the citizen who wants to walk the street deserve better protection. The rise in crime must be brought to an end. Already Mayor Washington and Safety Director Murphy have increased police protection by twenty per cent in some areas by stretching existing resources. The grim statistics suggest that this is not enough, either to curb crime or to restore the calm and confidence so essential to the welfare and well-being of the city. What it apparently comes down to is a need for more resources—more money and more manpower. The alternative is a continuing rise in the crime rate and, with this, all the debilitating effects of fear and frustration.

[From the Washington (D.C.) Evening Star, May 18, 1968]

SAFETY ON THE BUSES

Is seems outrageous that brutal, senseless murder was required to focus the full attention of the community on the legitimate demand of Washington bus drivers for greater protection against physical violence from thugs bent on robbery.

In reality, of course, the previous neglect of this problem was nothing as simple or as clear-cut as mere negligence. For the plight of the bus drivers is not an isolated outthrust of criminality; it is part of a pattern of steadily mounting crime and violence in the streets which is affecting virtually every aspect of life in this city and which has placed unbearable strains on the normal processes of meaningful law enforcement.

At least, however, a start has been made in the case of the bus drivers. "The boys," said an official of the bus drivers' union, "have had a belly full," and the extent of their grievance is partly illustrated in the figures released yesterday by police. Total bus robberies in 1967: 326. Total during the first 4½ months of this year: 232—a rate nearly double the previous year's. These cold statistics, moreover, tell nothing of the physical harm suffered by bus drivers or of the fear and the uncertainty which surely have been constant companions of many of them.

It is fortunate that the emergency measures announced last night by Deputy Mayor Fletcher have persuaded the bus drivers to remain on the job, for bus transit is a vital public service which must be maintained. The added police patrols along bus routes and the new plan to relieve drivers of the responsibility to carry ready cash, requiring that passengers provide exact fares, are sensible first steps. Obviously, however, they are only that. More effective permanent measures of relief must be found. Perhaps the best hope rests in the installation of radio or other alarm systems in buses—possibilities which were discussed tentatively yesterday.

The ultimate solution, however, clearly lies in a more effective means of combatting the whole broad spectrum of street crime, and the imposition of penalties which mean something to those punks who can be apprehended and convicted of offenses. The old-fashioned idea of punishment as a deterrent to crime has few champions these days. It is a concept, in our opinion, which should be revived.

Mr. McCLELLAN. Mr. President, does the Senator have any of his 5 minutes remaining?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. McCLELLAN. Will the Senator yield?

Mr. BREWSTER. I yield.

Mr. McCLELLAN. May I say to my distinguished friend that he will have an opportunity to help do something about the situation of which he speaks. The issues here are clearcut. We are either going to back up law enforcement officials by giving them the opportunity to perform their duty within reason, and as they did it for 100 years, or we are going to ratify, in effect, the liberal decisions of the Court which are responsible for thousands of criminals being loose in America today, and helping make our streets unsafe. Look at the chart. It tells the story. I hope my friend will join us in this fight.

Mr. BREWSTER. I know that the wives of the Transit Co. drivers who visited me yesterday, and last week the storeowners of hundreds of stores that have been established here in the District, are desperately worried, and they want Congress to do something.

Mr. TYDINGS. Mr. President, I congratulate my distinguished colleague for his remarks.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

The PRESIDING OFFICER. Who yields time?

Mr. TYDINGS. I yield myself 5 minutes.

I might point out that the Senator's remarks, particularly regarding the urgent need for adequate pay and adequate strength of the police force, as far as I am concerned, ring the bell. The principal deterrent to crime today, as it has always been, is the policeman, the cop on the beat. Unfortunately, throughout the Nation, we expect our policemen to be veritable Solomons as far as wisdom is concerned, and Sampsons as far as strength is concerned, and yet we pay them substantially less than the average factory worker makes. We require that they use their free time to stand in court waiting for delayed cases to reach a judge. Many police officers are forced to moonlight, just to support their families in an adequate standard of living.

Mr. President, in order to be really effective in the field of reduction of crime, we have to strengthen our police forces and our law enforcement agencies. That is what title I, title III, and title IV of the pending bill would do. But I regret to disagree with the remarks of my distinguished colleague and friend, the Senator from Arkansas, in which he infers that the rise in crime has a relationship to three or four decisions of the Supreme Court which relate to the admissibility of evidence.

The fact of the matter is that there is no empirical data to support that position. It is a position that I have heard time and again, but it does not have the foundation of any facts.

It is an argument which is popular and appealing, but it is not factual. And the three studies to date on the effect of the so-called Miranda decision all, by

facts, rebut the argument made by the Senator from Arkansas.

These three studies have been extensive and objective studies that have been made by unbiased law schools across the United States. One was made at Yale, one at Pittsburgh, and one at Georgetown.

The study at Yale was a study which was conducted for a period of 3 months. The members of the law review and the student body there sat in on every police interrogation of a criminal suspect or arrestee. There were 118 such cases.

During the same period of time they studied the police records. They studied the files and, as I have indicated, they actually sat in on the basic investigation and interrogation itself.

It is interesting to note that, of the cases handled by the police department of New Haven, Conn., in 87 percent of the cases, the statements were not used as evidence.

It was noted during this period of time that some of the police officers gave all of the warnings required in the Miranda case; namely, that an arrestee is entitled to be warned that he can remain silent, that anything he says can be used against him, that he is entitled to counsel, and, if he is too poor to have a lawyer, he is entitled to have appointed counsel.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TYDINGS. Mr. President, I yield myself another 5 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for an additional 5 minutes.

Mr. TYDINGS. It is interesting to note that in the group that did not have the Miranda warnings, only one-third made statements, whereas in the warned group one-half made statements.

I think the lesson to be learned from that is that if an individual wishes to make a statement—and I found this to be very true during my years of service as a U.S. attorney—the fact that he is told that he does not have to make a statement and that everything he says will be used against him and that he has a right to appointed counsel if he is too poor will not deter him from making a statement.

The reason for the Miranda warning is to protect individuals against the coerced or the false statements.

In Pittsburgh they conducted an investigation or a study in which they relied on the police files. They studied the files for the period after the Miranda decision and for a like period before the Miranda decision in an effort to determine whether the conviction rate went up or down or whether there was any significant connection between the conviction rates and the Miranda decision.

They found there that after the Miranda case, the rate of confessions was down by 17 percent. However, they found that there was no decline in the conviction rate, that the conviction rate was constant, and that of the 74 who refused to make a statement on arraignment, there was sufficient evidence to hold 73 of them.

Even more important, however, was the determination that the rate of crime clearance—that is, the report of the number of crimes committed and their solution by the police officers of Pittsburgh—was constant and did not fall.

Mr. President, it was also found in the Pittsburgh study that the actual rate of guilty pleas rose by 5 percent after the Miranda case.

In Georgetown, the 1-year study on the role of defense counsel after the Miranda case indicated that, of the 15,000 arrests made in the District of Columbia, only 7 percent requested counsel, and the rate of statements given before and after the Miranda decision was constant.

I think that anyone who has ever been a prosecutor realizes that it is rare indeed that a confession solves a crime. The statement or confession is obtained after the crime has been solved, and it is used to nail down the evidence.

When a person is ready to make a statement, the mere fact that he is warned that anything he says can be used against him, that he does not have to make a statement, and that he is entitled to counsel is not going to deter him from making a statement.

This is the same warning that has been used by the FBI for almost three decades. It is the same warning that has been used by the military courts of justice. It is the same warning that has been used by most Federal investigative agencies.

Should title II be adopted, it will injure law enforcement efforts in the United States in my judgment. It will reduce the effectiveness of police officers because law enforcement at all levels will be left in hopeless confusion. Which rule should the police follow in interrogating suspects or conducting a lineup—the Miranda and Wade rules laid down as guidelines by the Supreme Court of the United States and the Constitution, or title II which leaves the discretion open to each State court and State constitution?

Should prosecutors rely on compliance with title II or insist on compliance with Miranda until the Supreme Court acts again?

Should lower courts refuse to accept confessions and eyewitness testimony in evidence unless they meet the Miranda and Wade statements? Or should they base convictions on title II which is in conflict with the Supreme Court decisions?

If the Supreme Court declares title II unconstitutional, there is a likelihood then that convictions in cases where officials relied on title II will be reversed.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TYDINGS. Mr. President, I yield myself an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for an additional 3 minutes.

Mr. TYDINGS. Mr. President, the confessions in those cases could be invalidated, eyewitness identifications excluded, and convictions overturned, and the ends of law enforcement would be defeated rather than advanced.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. LONG of Louisiana in the chair). Who yields time?

Mr. BIBLE. Mr. President, will the Senator from Arkansas yield me 10 minutes?

Mr. McCLELLAN. Mr. President, I yield 10 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 10 minutes.

Mr. BIBLE. Mr. President, the proposed Omnibus Crime Control and Safe Streets Act of 1967 comes before the Senate propelled by repeated, insistent demands of citizens throughout the length and breadth of the Nation for immediate and effective action that will help stem the wave of crime and violence in our communities. The rising tide of lawlessness is without question the gravest domestic problem confronting all levels of government throughout the Nation. This alarming fact, underscored by spiraling crime statistics, is breeding fear in the hearts of law-abiding citizens across this land as they read their newspapers, listen to their radios, watch their televisions, or learn that friends or acquaintances have been victimized.

Preliminary figures released by the FBI show that during calendar year 1967, crime nationally increased 16 percent over 1966. Violent crime rose 15 percent. Murder was up 12 percent, aggravated assault 8 percent, forcible rape 9 percent, and robbery 27 percent. Crime in our large core cities rose 17 percent. Our suburban communities reported a 16 percent rise, and our rural areas a 13 percent rise.

I shall not dwell on the statistics, for we all know generally what they show. We know also that behind them lay untold personal tragedy, human misery, a deplorable erosion of the quality and serenity of our daily lives, and a gigantic economic loss.

Mr. President, the people of America are fed up. The condition we confront is outrageous.

The times are marked by a sinister permissiveness. There was a time when people felt secure in the belief that crime does not pay; that the fruits of lawlessness were quick apprehension, swift justice, and fitting punishment. Today, we are not so sure. It is alarming, but true, that there is increasing recourse to crime as the easy way out, and it is more alarming still that all too often the rewards are high and the prospects of conviction low.

I am not suggesting that the bill before the Senate today, or any single piece of legislation can cure this disease. I know of no panaceas. But it is inescapably true that poor law enforcement and unrealistic, impractical impediments to the effective administration of justice in our courts can only provide temptation and encouragement to potential hoodlums and criminals. The objectives of the bill before us—namely, to improve the law enforcement and crime prevention capability of police forces throughout the Nation, and to facilitate the administration of justice in the courts—deserve the support of every Member of the Senate. These goals must be achieved. They are

basic and necessary elements of any truly effective congressional declaration of war on crime in the United States.

At this time, Mr. President, I wish to focus my remarks on one particular aspect of title II of S. 917, dealing with the admissibility of confessions in criminal prosecutions. However, before I do that, I should like to comment briefly on the statement that was made a moment ago by the distinguished junior Senator from Maryland concerning the police situation in the Nation's Capital.

We have attempted to be realistic. We have attempted to upgrade the salaries so that they will attract good men into this very dangerous occupation. Just yesterday, Congress completed its action on a bill to raise the salaries of District of Columbia police officers to $8,000 on July 1, $7,800 retroactive to October 1 of last year. This is but one step in the right direction. It is not the complete answer, obviously. It is possible that even this increase will not be sufficient to bring our police force to its authorized strength.

Actually, there is no ceiling on the number of policemen here in the District other than the appropriated amounts of money. I believe the appropriated amounts provide for approximately 3,100 policemen, and I am advised that as of today, the police force is approximately 165 short of that figure. So I am hopeful that the increased pay scale will attract more men into the force, because this is one area in which a beefing up is needed. This, of course, will go some part along the way toward helping in this particular area.

Similarly, we are presently planning hearings with respect to providing additional manpower in our court system. This also will be helpful.

None of these actions, obviously, is the complete answer, but they all are steps along the road to trying to grope with this very bad problem.

Mr. President, I now return to the discussion of title II, with respect to the admissibility of confessions in criminal prosecutions.

Section 701(a) of title II of the bill proposes to add a new section 3501(c) to the United States Code. The effect would be to provide that in any prosecution by the United States or by the District of Columbia, a voluntary confession made or given by a person while in the custody of any law enforcement officer or agency shall not be inadmissible in court solely because of delay in bringing the accused before a commissioner or other proper committing magistrate.

The design of the subsection is to overcome a serious impediment to the admission of justice in the Federal criminal courts caused by the Supreme Court decision in 1957. I do not know of any case in recent years that has become wider known and wider discussed and cussed than the case of *Mallory* v. *United States*, in 354 U.S., at 449.

I direct my remarks to this particular portion of title II, because, as chairman of the Committee on the District of Columbia, the problems raised by the Mallory decision, and efforts to overcome them through legislation have occupied a great deal of my time and energies since early in the 87th Congress.

As the Senate knows, last December the Congress overwhelmingly enacted and the President approved an omnibus crime bill for the District of Columbia—Public Law 90–226—which includes a provision specially designed to overcome the stultifying effects the Mallory rule has had on law enforcement and the administration of justice here in the Nation's Capital. Of course, the District of Columbia crime legislation was an exercise of Congress' special legislative jurisdiction over the criminal laws of the District, and its effect is limited to the District of Columbia. However, I know of no more compelling case study of crime in America today than that conducted by my committee on conditions right here in Washington—at the very doorstep of Congress.

Regrettably, the District of Columbia typifies crime in America, particularly in the major cities of the Nation.

As I reported to the Senate last December, at the time we were discussing the proposed legislation, compared with 16 cities of comparable size—and it is fair when we compare cities of comparable size—Washington ranked first in robbery, second in aggravated assault, third in murder, fourth in housebreaking, fourth in larceny of $50 and over, fifth in auto theft, and eighth in rape.

Crime in Washington reached an all-time high in 1967.

We have often heard the comment, "Well, you compare favorably with other cities of comparable size," but that is a very poor comparison, because all cities of comparable size should be ashamed of the record they have in this area. Compared with a nationwide increase of 16 percent, crime in the District rose some 34 percent, more than double the rise nationally in cities over 250,000 population.

According to preliminary figures released by the FBI in March of this year covering offenses known to the police in cities of over 100,000 people, during 1967 the District was the scene of 178 murders and non-negligent manslaughters—37 more than in 1966—172 forcible rapes—38 over 1966; 5,759 robberies—2,056 over 1966; 3,143 aggravated assaults—34 below 1966; 14,702 burglaries and breakings or enterings—4,204 over 1966; 7,124 larcenies of $50 or more—1,863 over 1966; and, 8,507 auto thefts—1,942 over 1966.

Yes, Washington has offered a prime case study of the rising crime wave. I find only one bright spot in the statistics. The Metropolitan Police Department has reported that the percentage increase in crime during March 1968 was the lowest of the previous 23 month-to-month comparisons of crime statistics.

There is no way of ascertaining what part the new District of Columbia crime bill may have played in producing this glimmer of hope. At that time, the new law had been in operation for only 3 months. But I hope, and pray, and expect that it will help reduce criminal activity as time goes by.

Mr. President, because of the Congress' exclusive legislative jurisdiction over the Nation's Capital, in the District of Columbia crime bill we were able to attack the crime problem frontally in several respects. For example, that legislation—

Enlarged the number of serious misdemeanors for which Washington police may arrest without a warrant;

It requires advance notice to the court and the prosecution of an intent to plead insanity in criminal cases;

It strengthens local law in connection with the offense of obstructing justice in the courts and obstructing criminal investigations, and increases the allowable penalty for such offenses;

The new statute provides stiffer minimum penalties for burglary and a number of crimes of violence—particularly crimes of violence committed while armed with a firearm or other dangerous weapon;

It strengthens District law regarding the dissemination of obscene matter, and deals specifically with the offense of making obscene material available to minors. The penalties for such offenses have been greatly increased.

A minimum sentence is prescribed for the offense of placing explosives with an intent to destroy property.

To facilitate police work, the new law authorizes officers to issue minor misdemeanor offenders citations for later appearance at a police precinct or in court—just as they do in traffic cases. To the extent possible, the purpose is to keep policemen on the street where they are needed, instead of devoting their duty time to transporting and processing minor offenders who can reasonably be expected to appear later in response to a citation.

And in a very timely fashion, I must say, the new District of Columbia crime bill strengthens and clarifies District law on riots and provides substantial penalties for rioting and inciting to riot.

Of course, these matters have no counterparts in the pending bill. They do illustrate, however that the Congress has already struck an effective blow against crime and in aid of law enforcement at its own front door here in the Capital.

Now, title II of the pending bill calls for legislative action in aid of law enforcement across the Nation. I commend the distinguished Senator from Arkansas for his able leadership in bringing S. 917 forth so that the Senate may work its will.

I commend him particularly for his diligent efforts—and I know they have spanned several years—to overcome unrealistic, impractical obstacles to reasonable in-custody police interrogation of criminal suspects, and the admission in evidence of voluntary statements and confessions made by accused persons.

Mr. President, I daresay that every Member of the Senate and every member of the Supreme Court and all the other courts in this Nation understand and appreciate the fact that reasonable, noncoercive police questioning of suspects and arrested persons is absolutely vital in the investigation of crime and enforcement of the law.

I know of no judicial decision that denies this fact of life, and certainly every law-abiding citizen in the land understands that to be effective, law enforcement officers must be in a position to ask questions.

But what has happened, and what is happening? Throughout the length and breadth of the Nation, our law enforcement officials complain that court-imposed restrictions on police questioning have tied their hands and tipped the scales in favor of the criminal. The hearing record underpinning title II is replete with letters from police departments throughout the country favoring action by the Congress to bring the scales of justice back into balance.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BIBLE. Mr. President, will the Senator yield me 5 additional minutes?

Mr. ERVIN. Mr. President, on behalf of the Senator from Arkansas, I yield 5 additional minutes to the Senator from Nevada.

Mr. BIBLE. Mr. President, in seeking to overcome the restrictive effect of the Mallory rule, I feel that section 3501(c) of title II proposes a step in the right direction. As I have said, the Congress took such a step in the District of Columbia crime bill. I am convinced it was necessary there, and feel that a clarification of the Mallory rule in title II of this bill will assist Federal law enforcement and improve the administration of justice in Federal courts throughout the Nation.

In Mallory against United States the Supreme Court interpreted and applied rule 5(a) of the Federal Rules of Criminal Procedure. Rule 5(a) applies in all criminal cases in the District of Columbia and in all Federal criminal cases throughout the country. The rule provides that an officer making an arrest shall take the arrested person without unnecessary delay before the nearest available U.S. Commissioner. In its Mallory decision, the court held that, if an arrested person is not presented without unnecessary delay but is held and interrogated by officers, any statement obtained during a period of unnecessary delay may not be received in evidence at a subsequent trial.

Mallory was a District of Columbia case. It was a case of unwitnessed forcible rape. The accused was arrested about 2:30 in the afternoon. He made his first statement of admission to the police about 9 p.m. He confessed to the crime about 10 p.m., at which time unsuccessful efforts were made to locate a U.S. Commissioner for purposes of arraignment. A formal confession was signed about midnight, and Mallory was arraigned the following morning. Some 9½ hours elapsed between the time of arrest and the formal confession. Mallory was convicted. The Supreme Court reversed his conviction on a finding that the confession was inadmissible as the product of an unnecessary delay within the meaning of rule 5(a). The indictment was later dismissed for lack of other sufficient evidence.

The Mallory rule has been frequently invoked in Washington courts. Unlike other jurisdictions across the country where the general run of felonies and crimes of violence such as homicide, rape, robbery, aggravated assaults, and others are tried before State courts, here in the District of Columbia the Federal court has jurisdiction, and rule 5(a) applies.

The public record made before the District Committee on the District of Columbia crime bill and before the Subcommittee on Criminal Laws and Procedure of the Judiciary Committee on the present bill leave little room for doubt that the Mallory rule has had serious adverse effects on law enforcement and the administration of justice.

As I have said, police interrogation is an essential law enforcement tool. It defies reason to imagine that we can call upon police agencies to prevent, investigate, and solve crime, and at the same time prohibit reasonable questioning of suspects and arrested persons. From time immemorial, the usual, most useful, most efficient, and most effective method of investigation has been by questioning people.

Indeed, many crimes of violence are unwitnessed except by the victim, and reasonable police interrogation is absolutely necessary if such crimes are to be solved.

What has been the effect of the Mallory rule? I think our experience in the District of Columbia demonstrates the need for modifying legislation.

The effect has been to exclude completely voluntary confessions from evidence, solely because of a delay between the time a person is arrested and the time he is presented before a Commissioner or magistrate for arraignment.

The effect has been to permit admitted criminals to go free—not because their confessions were coerced by the police, but merely because of a lapse of time.

The effect has been confusion and uncertainty respecting the permissible time limits of police questioning.

Let me illustrate. In Mallory, a delay of 9½ hours was deemed unreasonable. Later, court cases reduced the allowable time factor to a virtual vanishing point—without practical regard for the voluntariness of the confession. In *Spriggs* v. *United States* (335 F. 2d 283), a 1964 case, the conviction was reversed because of the admission in evidence of a voluntary confession made while the accused was being booked some 30 minutes after arrest when an officer told him three witnesss had seen him shoot another person.

In *United States* v. *James J. Jones*, a 1963 case (Criminal Case No. 366–63), the trial court excluded a confession which occurred within 15 minutes after the arrest. The trial judge viewed rule 5(a) as banning all questioning and requiring presentment forthwith.

As noted in the report on S. 917, in *Alston* v. *United States* (348 F. 2d 72), based on a 5-minute delay, the U.S. Court of Appeals, District of Columbia, reversed the conviction of a self-confessed murderer whose guilt was not in dispute.

In other cases, convictions have been overturned based on delays between arrest and presentment ranging from 2 to 4½ hours.

The impact of the Mallory rule in the Nation's Capital is dramatically demonstrated by the celebrated case of *Killough* v. *United States* (315 F. 2d 241; 336 F. 2d 929). Killough had beaten and strangled his wife to death and buried her body at the city dump. Five days later, he reported her missing, and left town without keeping a prearranged appointment with the police to give them further information. After 5 days, he returned home and the police spent a day questioning him about his missing wife. At the end of the day, he was booked and held. The next day, he confessed and led the police to the body. After that he was charged and taken before a U.S. Commissioner for a hearing under rule 5(a).

The following day, while at the District jail and not in police custody, Killough reiterated the essentials of the crime to a police officer, who had come to receive instructions from Killough as to the burial of his wife's body.

This second confession was admitted in evidence at trial as a voluntary statement made after Killough had been duly warned and advised of his rights under rule 5(a).

A divided court of appeals held in substance that the second confession—even though it was voluntary—was inadmissible under the theory that it was the fruit of the first confession and therefore was improperly admitted at the trial because the first confession was obtained during a period of "unnecessary delay" prior to presentment before the Commissioner.

Killough's conviction was reversed. The case was remanded, and a third trial was had. The principal evidence at that trial was a third voluntary confession, which Killough made not to a policeman but to a classification clerk—an employee of the District of Columbia jail—following his arraignment. The incriminating statements were made to the clerk during routine questioning by the clerk for the purpose of determining the proper care and treatment of the accused.

The case was tried again. The trial court admitted the third confession, and the court of appeals again reversed the conviction, holding that the confession made to the classification clerk must also be excluded from evidence as having flowed directly from the two earlier illegally obtained confessions.

But that was not the end of it. Killough was brought to trial a third time; this time without the benefit of any confession evidence. The Government relied on such evidence as had not been excluded by the previous decisions in the case. The defense moved for acquittal. Observing that the court of appeals had "left the U.S. Attorney's Office with no competent evidence," the trial court finally acquitted Killough of his wife's murder.

I think the words of the experienced trial judge on that occasion illustrate the agony that besets many of our hard-working, dedicated trial courts when admitted criminals must be turned free because of the Mallory rule. He explained to the jury that he was forced to order Killough acquitted because the court of appeals had excised from the case three separate confessions of the defendant that he killed his wife and threw her body on a dump. In doing so, he said, and I quote:

> I do so with a heavy heart, and in fact it makes me almost physically ill to do so.
>
> I think tonite that felons in the District of Columbia can sleep better. I think that law-abiding citizens can take new apprehension for their safety.

Mr. President, I have dwelt on the Killough case because I think it is a graphic and telling monument to the kind of miscarriage of justice that can occur when procedural rules are so enthroned that they supplant the search for truth and justice in our courts.

There was no substantial question respecting the voluntariness of Killough's several confessions.

As was pointed out in the District Committee's report on the local crime bill, as rule 5(a) of the Federal Rules of Criminal Procedure has been applied in the District, even where it can be demonstrated that the police have not acted coercively, voluntarily given statements have been excluded solely on the basis of very minimal delay.

I feel that this kind of interpretation of the law is wrong. Substantial evidence was presented before my committee indicating that the Mallory rule is not only an impediment to effective law enforcement, but may be a factor influencing the increase in the crime rate. Because of the way the rule has been applied, admitted criminals have been set free by the courts. It has become increasingly difficult to get a confession voluntarily made to policemen admitted into evidence. I understand that because of the risks of reversal on Mallory grounds, some prosecutors have, at times, foregone the use of perfectly voluntary incriminating statements.

One result of this barrier to the truth is that often—all too often, I think—criminals have been permitted to plead guilty to lesser offenses carrying lesser penalties that are completely incompatible with the seriousness of the crimes they committed.

I am completely opposed to any legal procedure that allows a confessed criminal to "cop a plea" to a lesser offense and escape the full measure of justice prescribed for his crime.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BIBLE. Mr. President, will the Senator yield to me for 3 additional minutes?

Mr. ERVIN. On behalf of the Senator from Arkansas, I yield 3 additional minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 3 additional minutes.

Mr. BIBLE. Mr. President, the District of Columbia crime bill approved last December recognizes that reasonable police interrogation of arrested persons is absolutely essential to effective law enforcement.

Title III of that bill authorizes questioning of any person arrested in the District of Columbia during the 3 hours immediately following arrest, provided such person is accorded all of his rights under applicable law. It provides that any statement, admission, or confession made by the arrested person during this 3 hours shall not be excluded from evidence in the courts solely because of delay in presentment.

The new District of Columbia statute protects the rights of the accused and at the same time assists the police by defining a time interval during which they can conduct any questioning, in accordance with law, without fear that statements properly obtained from the accused will be arbitrarily excluded at trial under rule 5(a) merely because of a time lapse between arrest and arraignment.

Thus, title III provides necessary guidance for the police.

At the same time, it protects all of the constitutional rights of the person under arrest.

The District of Columbia crime bill has already taken the first step toward loosening the noose that the Mallory rule and subsequent court decisions placed around the neck of law enforcement here in the Nation's Capital.

Title II of the present bill proposes a further loosening of this noose not only here in the District of Columbia but throughout the Nation. I support this objective. The Mallory rule has caused confusion and uncertainty for Federal law-enforcement officers and courts not only here in the District but across the Nation. Here in the District of Columbia alone there have been nearly 150 court decisions relating to Mallory questions. Many of them conflict and have caused the release of guilty men.

Police and prosecutors are in need of clear guidance in this area of the law. In the absence of guidance, police interrogation, and the use of completely voluntary confessions and other incriminating statements has been severely curtailed.

The Nation needs a prompt statutory clarification of the Mallory rule, and the Congress is in a position to provide it.

The rule announced in Mallory is not a rule of constitutional law. It is a rule of evidence. And, as a rule of evidence, it can be changed by legislation. What the Congress approved by the language of rule 5 of the Federal Rules of Criminal Procedure, Congress can now clarify by statutory enactment, and should do so.

I cannot believe that in approving the Federal Rules of Criminal Procedure the Congress intended the results that have followed in the wake of the Mallory decision. I cannot believe that Congress in its wisdom—and in its awareness of the practical problems of law enforcement—contemplated that entirely volitional, uncoerced statements and confessions would be excluded from evidence, where an accused has been accorded all of his constitutional rights, merely because of a reasonable delay in his presentment before a Commissioner or magistrate. To think otherwise is to deify form, sacrifice substance, and be tantamount to condoning the gross miscarriages of justice that have flowed from the Mallory rule.

Mr. President, I am not unmindful that legislative efforts to clarify rule 5(a) and to modify the impact of the Mallory decision on law enforcement are opposed by some on constitutional grounds. While it is clear that in Mallory the Court did not base its decision on the Constitution, the feeling seems to be that there is a constitutional issue lurking in the wings.

In my judgment, Mr. President, Mallory established no constitutional doctrine, and the Congress is free to, and should, exercise its legislative responsibility to correct misapplications of procedural rules and to revise rules of evidence in the Federal courts.

In any case, I do not believe that Congress should sterilize itself on the premise that congressional action may not be effective because of a constitutional question mark. Day in and day out the Congress faces this question mark, and we cannot shirk our duty because of it.

It is the duty of Congress to judge, in its wisdom, what it believes to be constitutional standards and to exercise its legislative responsibility.

I believe that the public interest here makes it necessary that the Congress act—and act promptly.

I agree with the Senator from Arkansas that it will avail us nothing if we limit our action in this legislation to financial assistance to law enforcement authorities, however necessary that may be—and I deem it highly necessary.

Money is not going to prevent the release by the courts of even one self-confessed murderer, rapist, or armed robber. Money alone cannot overcome the present unrealistic restrictions against police questioning of criminal suspects and arrested persons. Money alone is not going to bring a proper balancing of the scales of justice—a balancing that will provide proper protection of individual rights and, at the same time, recognizes that society has a fundamental right to protect itself from criminal abuse.

As I have said before, it seems to me that the scales of justice have become unbalanced. Too many court decisions seem to have abandoned the traditional concept of substantial justice, and replaced it with a distressing new concept one might call technical justice. The all too frequent result is that the truth is ignored, and the admitted criminal goes free to strike again.

In all such cases, society is the victim. Every time some hoodlum escapes justice because of some strained application of procedural or evidentiary rules, disrespect for the law increases a hundredfold. In the meantime, crime flourishes and communities throughout the Nation find themselves in the perilous position of losing control of the lawlessness and violence running rampant in their streets.

The PRESIDING OFFICER. The time of the Senator from Nevada has expired.

Mr. McCLELLAN. Mr. President, I yield 2 additional minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 2 additional minutes.

Mr. BIBLE. Mr. President, no one can read the record made before the Subcommittee on Criminal Laws and Procedures, and the extensive record on the District of Columbia crime bill, and come away with any other feeling than that the Mallory rule has been a significant contributing factor to the decreased effectiveness of law enforcement across the Nation.

In saying this, I intend no disrespect toward the court. I mean only that, in my judgment, the record demonstrates that in an effort to protect individuals accused of crime, these decisions have created grave problems for law enforcement.

One of our first duties as citizens is to uphold the law, and the decisions of our courts. However, this does not mean that

there is an obligation of blind and unreserved support for all court decisions. When court decisions have the effect of undermining law enforcement in the Nation, all citizens—and particularly Senators and other legislators—have an obligation to seek corrective legislative action within the framework of our governmental system.

Mr. President, it is time for Congress to act. No Member of the Senate suggests for a moment that coerced confessions should be admitted against any accused person. At that same time, the present state of the law defies commonsense and flies in the face of reason. It is a travesty on justice to be required to reject or exclude from evidence the voluntary, freely given incriminating statements of a criminal suspect based solely on a lapse of time between his arrest and his presentment before a judicial officer.

In my opinion, section 3501(c) of title II proposes a change in the law that is vitally needed to restore balance and commonsense to the law governing the admissibility of such evidence.

REJECT ALL OF TITLE II OF THE CRIME CONTROL AND SAFE STREETS ACT

Mr. TYDINGS. Mr. President, I yield 20 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 20 minutes.

Mr. BROOKE. Mr. President, I thank the Senator from Maryland.

Mr. President, we are approaching a vote upon measures which have become, in my opinion, the most significant features of this entire crime bill. The omnibus crime control and safe streets bill is a response to serious social problems. The reality, not just the statistics, of crime, has increased. Our teeming urban centers have become subcultures of violence, where hostility and physical aggressiveness are all too frequently viewed as normal rather than irregular. And a powerful and pervasive national network of organized crime boasts resources and influence which stagger the imagination.

Much of the bill which is before the Senate is reasonably calculated to cope with the problem. Title I can be a basis for the development of techniques by which Federal funds may be made available to assist State and local law enforcement—without also adding the burden of Federal control. Title III will authorize the interception of wire or oral communications pursuant to court order, an approach to which the U.S. Supreme Court has already indicated its approval. I generally support these provisions, for I believe that they will make available a necessary and potent weapon against organized crime without disturbing fundamental civil rights and liberties. Our deliberations appear to have been completed with respect to title IV. And while I believe that far more stringent firearms regulation is essential, I feel that we have taken at least a first step toward limiting the use of weapons for criminal purposes.

Yet, even these extensive provisions are insignificant compared to what may transpire in the Senate today. We are about to discover whether fear or reason is to determine our actions. Will we recognize and provide the legitimate requirements of effective law enforcement so that police departments will be better equipped to fulfill their responsibilities? Or will we succumb to a "panic" which threatens to disrupt our deliberations, which strikes out not at crime but at the courts, which honors "order" but condemns the Constitution—and which, despite all the claims to the contrary, can have no appreciable effect upon the problem of crime in these United States?

Mr. President, as a man much of whose public life has been spent in law-enforcement capacities, I ask—let us return to reality. Some of our finest and best intentioned citizens are convinced that, had the Supreme Court not decided the Miranda case, the crime rate would not be increasing. The most accurate response to this has been provided by a law-enforcement officer, Mr. David Acheson, former U.S. attorney for the District of Columbia, who said:

> Changes in court decisions and prosecution procedures would have about the same effect upon the crime rate as an aspirin would have on a tumor of the brain.

We have practical problems which cry out for practical solutions. Let me mention a few items which we, as well as State and local governments, should be considering. We should be developing ways to improve the capacity of the police to deal with the crime situation. This means higher salaries so that better personnel will be attracted to law enforcement as a career. It means multilevel entry, as recommended by the President's Commission on Law Enforcement and the Administration of Justice, so that talented people will not be discouraged by the requirement that they begin their police careers at the lowest possible grade. There should be experimentation with the "precinct" system of assignment so that a heavy concentration of police and crime-fighting equipment can be moved into the areas with the highest crime rates. There should be greatly expanded appropriations for the purchase of the latest weapons and investigative apparatus, and police training should be reoriented to include instruction in criminal law, new law-enforcement practices, and complex scientific detection equipment. There should be a more efficient use of manpower through the device of hiring civilian personnel to fill clerical positions. And there should be far greater coordination among individual police departments, so that duplication of effort is eliminated, and limited resources are employed as effectively as possible.

We should be discussing matters which transcend the question of the ability and resources of the individual police officer. The attention of governments at all levels should be focused upon the development of systems of juvenile courts and correction facilities which can make a meaningful contribution to the treatment of the youthful offender; upon the creation of regular organized crime units; upon the application of the authority of our regulatory agencies to root out the elements of organized crime which have infiltrated legitimate businesses; upon the use of grand juries as investigative instruments, rather than limiting their operations solely to the return of indictments; and upon the passage of immunity statutes which will permit prosecutors to breach the wall of silence which so often protects organized criminal activity.

These are just a few items which I have enumerated as representative of the kind of war on crime which can be successful. We will make progress against crime by enlarging our police departments, improving their caliber, modernizing their equipment and coordinating their activities. Ultimately, we will make progress by attacking the conditions which breed crime.

But, Mr. President, we are not focusing upon these subjects. While in the Nation's Capital busdrivers fear to drive their routes without police protection, we are being sidetracked by an attack upon some of the fundamental principles upon which this country was founded. The proponents of title II of this bill would like to persuade us that their argument is with a handful of men who presently sit on the Supreme Court. In actual fact, Mr. President, their argument is with the doctrine of separation of powers; with the federal system; and with our entire structure of government.

We have tended so far to treat title II in general and somewhat vague terms. Many citizens know only that in some way the title will reverse some judicial decisions which they believe are undesirable. But can the title withstand a more searching examination of its specific provisions?

Title II seeks to do away with the standards set forth by the U.S. Supreme Court in the case of Miranda against State of Arizona as conditions to the admissibility of confessions. The Miranda opinion requires that a defendant be warned that he has a right to remain silent; that anything he says may be used to his detriment; that he has the right to the presence of counsel while being interrogated; and that counsel will be provided if he is financially unable to retain one. It is very curious to me that the Miranda case can be condemned in some quarters as being itself responsible for the rising crime rate, when it merely calls for procedures similar to those adopted voluntarily years earlier by the Federal Bureau of Investigation.

Title II attempts to undo efforts by the High Court to make the fifth amendment guarantee effective in practice as well as in theory. The Constitution cannot apply solely to those sufficiently educated to be familiar with its provisions. We are threatened with a double standard of justice: Those aware of their rights shall be entitled to them; but those not aware of their rights shall be made the victims of ignorance. Mr. President, I believe that the Constitution applies to everyone, and that the Supreme Court has taken an admirable step forward to guarantee this principle.

Furthermore, the Court has recognized what has become a fundamental proposition in our age: that an individual can be coerced as easily by psychological as

by physical pressure. The atmosphere of the police station, the isolation from family and friends, the subjection to an interrogator intent upon extracting a confession, are inherently coercive, and can at times compel a response by a suspect even more easily than can traditional third-degree methods. This basic imbalance between the State and the individual defendant cannot be redressed by a subsequent jury trial, for the defendant may well have irretrievably incriminated himself prior to the commencement of formal trial proceedings. But it can be redressed by making the advice of counsel available to the defendant at this stage of the criminal process—a stage which is not only crucial, but can well be determinative.

Mr. President, there are those who assert that suspects give fewer confessions after Miranda, and that consequently effective law enforcement has been impeded. I have never claimed that Miranda will make life easier for the police, and I suspect that the claim that the police are now able to obtain fewer confessions is a true one. I submit, however, that the ease with which Government is able to secure convictions is not the primary measure, for, if it were, much of the Constitution would be irrelevant. In the long run, the decision will result not in easier, but in improved, law enforcement. Confessions which suspects have been "persuaded" to give frequently prove unreliable. Likewise, less reliance upon confessions is likely to result in more reliance upon sound investigative techinques.

Ours is an "accusatorial," not an "inquisitorial," system. Thus, conviction should ordinarily result from evidence gathered independently by the Government; its agents should not rely, to the extent that they have, upon building a case out of the mouth of the accused. Title II in no small way represents a step backward toward acceptance of inquisition, a step I profoundly hope that the Senate will reject.

Let us look briefly at the remaining provisions of title II. The title provides that confessions shall not be inadmissible in evidence in a Federal court solely because of delay between the arrest and arraignment of the defendant. No limitations are placed upon the length of time which may be permitted to elapse between arrest and arraignment, despite the holding in Mallory against United States that there must be not unreasonable delays at this point in the criminal process. This provision would invite indefinite delays before arraignment.

Title II provides that eyewitness testimony derived from a lineup shall be admissible in evidence against the accused irrespective of the presence or absence of counsel at the time that the lineup took place—a policy directly in conflict with the Supreme Court's decision in United States versus Wade.

Title II would eliminate the Supreme Court's jurisdiction to review determinations relating to the admissibility of confessions and eyewitness testimony by State courts, as well as determinations with respect to the "voluntariness" of confessions made by Federal courts. This limitation upon the appellate jurisdiction of the Supreme Court is sought despite the mandate that the Constitution "shall be the supreme law of the land, and the judges in every State shall be bound thereby," and despite the sound doctrine of a century and a half that the Supreme Court shall be the final arbiter of the meaning of the Constitution.

Title II would eliminate the use of the writ of habeas corpus as a means for review of State criminal convictions, despite the directive of the Constitution that the "privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it." The sole remedy which would remain available to a defendant in a State criminal proceeding who seeks to raise a Federal issue would be that of appeal of certiorari to the U.S. Supreme Court, both of which procedures are wholly discretionary.

Each of these provisions is highly dubious from a constitutional viewpoint. Each is unnecessary from the viewpoint of effective law enforcement. Each challenges the delicate balance forged in the Constitution which has sustained liberty in the United States for close to two centuries. At the very least, before taking such drastic measures, we should examine the actual effects of the disputed decisions. Thus, I believe that Senator TYDINGS' recommendation for a study of the subject matter represents a sound compromise.

Mr. President, the total crime picture in this country today is such that nothing short of a massive expenditure of time, energy, and money will be required to alter it. The need has been clearly and unequivocally stated by the President's Crime Commission. Yet nowhere in the Commission's report, which encompasses literally hundreds of recommendations, does there appear anything resembling the provisions of title II of this bill. Nor does the title have the support of the Justice Department; in fact, both the Attorney General and the Solicitor General of the United States have condemned it. It could well be that the highly objectionable features of title II will subject the remaining laudable and essential provision of S. 917 to the jeopardy of a Presidential veto.

The Senate cannot strike a blow for law by ignoring the Constitution. Justice Louis D. Brandeis recognized this principle when he wrote, a generation ago:

> Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites anarchy.

Mr. President, it is my profound hope that the vote we are about to take will reveal the Senate's respect for these principles. I hope that we will vote to strike the provisions of title II.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. I yield 3 minutes to the Senator from Wyoming.

KEEPING THE BALANCE TRUE

Mr. HANSEN. Mr. President, I rise in support of the provisions presently included in title II of the omnibus crime control bill.

Supreme Court Justice Benjamin Cardozo once said:

> Justice, though due to the accused, is also due to the accuser. The concept of fairness must not be strained until it is narrowed to a filament. We are to keep the balance true.

I do not pretend to predict what Justice Cardozo would have done if he had sat in judgment on such recent decisions as Mallory, Escobedo, Miranda, and Wade. But I do know what I would have done.

I fear the balance is becoming unhinged in this country. I fear that those accused of crime receive better protection today than those victims of crime. I am in favor of restructuring a balance to our criminal laws. If this means that Congress must speak, then I feel that Congress should have the courage to speak, regardless of how extraordinary such action might be.

During my service as Governor of the State of Wyoming, a case was very dramatically brought to my attention. This case goes right to the heart of the debate here today.

I have heard law school professors argue that the Miranda decision has had no real effect on law enforcement or that we have not had sufficient time to evaluate these effects. Well I can testify from practical experience that decisions such as Miranda have had a very decided effect. In the case to which I have alluded, a prime suspect of a brutal stabbing murder in Wyoming made a complete confession which from all the circumstances appeared to be totally voluntary. Nevertheless, since in the opinions of the prosecuting and defense attorneys, not all of the conditions called for in the Miranda case decision preceded the confession, and since no other sufficient evidence was available, the prosecutors felt obliged to refrain from bringing this case to trial. Thus, both the accused and the State never benefited from the full scrutiny of a public trial.

Certainly, justice was not served in this case. The suspect himself, his family, the bereaved family of the victim, and the concerned community, all suffered at the hands of a paralyzing technicality.

I do not argue here whether the Miranda decision, on its merits, was right or wrong. But I do simply point out this one case which was obviously prejudiced and frustrated in the face of commonsense and obvious justice.

I am hopeful that the Congress will adopt title II in its entirety. Let us do so unequivocally and without apologies. Such vigorous action by the Congress will provide as much food for study at our country's law schools as has been provided by the Court decisions which are being discussed here.

If Congress takes these steps, the country will be the gainer. I urge the adoption of title II.

The PRESIDING OFFICER. Who yields time?

Mr. TYDINGS. Mr. President, I yield 35 minutes to the Senator from Hawaii.

Mr. FONG. Mr. President, I consider title II to be a dangerous affront to the Constitution of the United States. It presents a grave threat to the fundamental principles of the Nation—to our basic concepts of separation of powers, to Federal supremacy, to judicial independence—in short, to our most cherished notions of justice and the rule of law.

Each of the provisions of title II is

vulnerable to serious constitutional objections. Several of the provisions are almost certainly unconstitutional on their face, because they attempt to overrule by statute clear commands of the Constitution—particularly those limiting the appellate jurisdiction of the Federal high courts and abolishing the habeas corpus jurisdiction of all Federal courts.

I had thought it settled within our federal system that what is mandated by the Constitution may not be dismissed by legislative fiat.

CONFESSIONS—MIRANDA CASE

Moreover, the provisions of existing law that title II seeks to overturn can hardly be declared unreasonable. Under present law, prior to any questioning, a putative defendant must be warned that first, he has the right to remain silent; second, that anything he says could be used against him in a court of law; third, that he has the right to the presence of an attorney; fourth, if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires; fifth, opportunity to exercise these rights must be given him throughout the interrogation; and, sixth, after these warnings have been given and he has been afforded these opportunities, the individual may knowingly and intelligently waive these rights and agree to answer questions or to make a statement.

These points were spelled out in the landmark decision *Miranda* v. *Arizona* (384 U.S. 436 (1966)), where the Supreme Court held that a confession made after the suspect was taken into police custody could not be used in evidence unless the above sixfold warning had been given before questioning.

As the Supreme Court pointed out in that case, this has been a long-established practice in FBI experience. The Court said:

> Over the years the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice and, more recently, that he has a right to free counsel if he is unable to pay. . . . The present pattern of warnings and respect for the rights of the individual followed as a practice by the FBI is consistent with the procedure which we delineate today. 384 U.S., at 483–484.

The FBI routinely uses a form to advise suspects of the constitutional rights to which they are entitled—and this practice was instituted even before the Miranda decision was handed down.

Under section 3501(a) of the bill, voluntariness is made the sole criterion of the admissibility of a confession in a Federal court. The section does not affect the application of Miranda to trials in State courts.

The procedure to be followed under the bill is as follows:

First. A preliminary determination of the voluntariness of a confession is made by the trial judge, outside the presence of the jury—section 3501(a).

Second. In making his preliminary determination, the trial judge is required to consider all the circumstances surrounding the confession, including the following specified factors, none of which is to be conclusive on the issue of voluntariness—section 3501(b): (a) Delay between arrest and arraignment of the dedendant; (b) whether the defendant knew the nature of his offense; (c) whether the defendant was aware or advised of his right to silence or that anything he said might be used against him; (d) whether the defendant was advised of his right to counsel; and (e) whether the defendant had the assistance of counsel during his interrogation and confession.

Third. If the trial judge makes a preliminary determination that a confession was voluntary, he must admit the confession in evidence—section 3501(a).

Fourth. The jury must then hear the relevant evidence on the issue of voluntariness and determine the weight to be accorded the confession—section 3501 (a).

Sections 3501 (a) and (b), then, would overrule all of the Miranda standards and render them merely as guidelines to determine the admissibility and the weight to be given a confession.

It is very apparent to me that these provisions are in direct conflict with the Supreme Court's decision in the Miranda case and would most certainly be held unconstitutional. The Court made it clear that the procedural safeguards established in Miranda are in addition to the traditional voluntariness test.

Since section 3501 dispenses with these safeguards, the section is contrary to the present requirements of the Constitution.

CONFESSIONS—MALLORY CASE

In the leading case of *Mallory* v. *U.S.* (354 U.S. 449 (1957)), the Supreme Court held that if an arrested person is not taken before a magistrate or other judicial officer "without unnecessary delay," as required by rule 5(a) of the Federal Rules of Criminal Procedure, any confession obtained during the period of delay is inadmissible in evidence in a Federal court. The Mallory decision was based on the court's supervisory power over the Federal courts, rather than on the Constitution.

Section 3501(c) of the bill specifies that a confession shall not be inadmissible in evidence in a Federal court solely because of delay between arrest and arraignment of the defendant.

The Mallory decision, excluding confessions obtained during a period of unnecessary delay between arrest and arraignment, is designed to withdraw any incentive that law enforcement officers may have to delay the arraignment of a suspect.

It encourages the police to bring arrested persons promptly before a judicial officer.

The outright repeal of Mallory by section 3501(c) would leave the "without unnecessary delay" provision of rule 5(a) of the Federal Rules of Criminal Procedure as a rule without a remedy.

Even in the recently enacted District of Columbia Crime Act, Congress did not see fit to repeal Mallory completely but provided a 3-hour period for interrogation, after which a person could be released without charge and without an arrest record.

Mr. President, I strongly believe that the prompt arraignnment of arrested persons is necessary in a free society which values the fair administration of criminal justice.

Prolonged incarceration and interrogation of suspects without giving them the opportunity to consult family, friends, or counsel must be discouraged.

EYEWITNESS TESTIMONY—WADE CASE

In another leading case, *U.S.* v. *Wade* (388 U.S. 218 (1967)), the Supreme Court held that a pretrial lineup at which a defendant is exhibited to identifying witnesses is a critical stage of a criminal prosecution. As such, the defendant is constitutionally entitled to the assistance of counsel at the lineup. The requirement applies to both State and Federal courts.

Section 3503 of the bill repeals Wade and makes eyewitness testimony that a defendant participated in a crime not reviewable in any appellate Federal court.

Here, again, there is no doubt in my mind that section 3503 is unconstitutional. As it dispenses with the procedural safeguards established in Wade for police lineups, it is therefore in conflict with the requirements of the Constitution.

FEDERAL COURT JURISDICTION

Under present law, the Supreme Court has appellate jurisdiction over all cases in the lower Federal courts. The Supreme Court also has appellate jurisdiction over cases in the State courts raising a Federal question—see United States Code 1251 and the following.

Section 3502 of the bill removes the jurisdiction of the Supreme Court or any other Federal court to review or disturb a State trial court's determination that a confession was voluntary, provided the State court's determination has been upheld by the highest State court having appellate jurisdiction over the case. Thus, although State courts would be required to continue to adhere to the standards set out in the Miranda case, their applications of the Miranda standards would not be reviewable in the Federal courts.

Section 3503 of the bill removes the jurisdiction of the Supreme Court and Federal Courts of Appeals to review or disturb any ruling of a Federal or State trial court admitting eyewitness testimony in evidence. Thus, although State courts would be required to continue to apply the Wade standard, their applications of that standard are not reviewable in the Federal courts.

Sections 3502 and 3503 would curtail drastically the jurisdiction of the Supreme Court and the lower Federal courts over State and Federal court determinations involving the voluntariness of a confession or eyewitness testimony.

These provisions are particularly serious with respect to State court determinations of these issues, since no Federal review whatsoever would be available—even though a Federal claim was obviously raised.

Any attempt by Congress to accomplish these results by statute rather than by constitutional amendment raises extremely difficult constitutional questions.

Although article III, section 2 of the Constitution provides that the appellate

jurisdiction of the Supreme Court is created "with such exceptions, and under such regulations as the Congress shall make," the exceptions and regulations clause does not give the Congress the power to abolish Supreme Court review in every case involving a particular subject, whether that subject be confessions or any other.

To interpret that clause otherwise would give the Congress the power to destroy the essential function of the Supreme Court in our federal system.

The supremacy clause in article VI of the Constitution states that the Constitution and laws of the United States "shall be the supreme law of the land." The Supreme Court is the only tribunal provided by the Constitution to resolve inconsistent or conflicting interpretations of Federal law by State and Federal courts and to maintain the supremacy of Federal law against conflicting State law.

To deny the power of ultimate resolution by the Supreme Court in any area is to nullify the principal instrument for implementing the supremacy clause in our constitutional system. The history of the exceptions and regulations clause is in full accord with this point.

UNWISE PUBLIC POLICY

Even if it were argued that the Congress has the constitutional power to abolish Supreme Court jurisdiction by statute, such action, in my opinion, would be extremely unwise as a matter of public policy.

Abolition of Supreme Court jurisdiction would seriously distort the delicate balance that is maintained between our three branches of Government and would greatly reduce the historic role of the High Court in our federal system. An attempt by Congress to abolish the traditional power of judicial review by the Federal courts over constitutional issues in a particular area would set an extremely bad precedent that could only have dangerous ramifications in other areas, since there would be nothing to prevent Congress from enacting similar legislation whenever the Court handed down a decision with which Congress disagreed.

Sections 3502 and 3503 are thus far more serious attacks on the Supreme Court than the ill-conceived Court-packing plan of the 1930's.

The exercise by the Congress of an ultimate power such as abolition of Supreme Court jurisdiction would precipitate a constitutional crisis of the most critical proportions.

Long experience has shown that the Federal courts, and especially the Supreme Court, perform an important and useful function in reviewing State criminal convictions in the area of confessions. A long line of confessions cases in the Supreme Court, extending back many years before the present controversy over Miranda and Wade, points up the fact that there have been numerous occasions when State courts have not effectively protected the constitutional rights of accused persons.

Moreover, by abolishing the appellate jurisdiction of the Federal courts, Congress would reduce the Constitution to a hodgepodge of inconsistent decisions by making 50 State courts and 93 Federal district courts final arbiters of the meaning of the various provisions of the Constitution.

"The mere necessity of uniformity in the interpretation of the national laws decides the question," wrote Hamilton in The Federalist. No. 80:

> Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

HABEAS CORPUS JURISDICTION

Under existing Federal law, the Supreme Court and the Federal district courts have jurisdiction to issue writs of habeas corpus where a prisoner is in State custody in violation of the Constitution or laws of the United States. (28 U.S.C. 2241.) In addition, nearly all States have laws providing collateral remedies for convicted persons.

Claims of denials of Federal rights by State prisoners must be heard on the merits and resolved. If appropriate disposition is not reached in the State courts, the Federal courts are available as an alternative forum through habeas corpus, unless the prisoner has deliberately bypassed or failed to exhaust an available State remedy.

Section 2256 of the bill would remove the habeas corpus jurisdiction of both Federal and State courts with respect to State criminal convictions. The sole Federal review of Federal claims by State prisoners would be limited to appeal or petition for certiorari to the Supreme Court from the highest State court having appellate jurisdiction over the case.

Mr. President, this provision is in square conflict with a very specific constitutional command. Article I, section 9, clause 2 authorizes suspension of the writ of habeas corpus "when in cases of rebellion or invasion the public safety may require it."

In 1867, Congress, in conformity with the Constitution, made the Federal writ of habeas corpus available to all persons, including State prisoners, restrained of their liberty in violation of the Constitution or laws of the United States. The writ cannot be withdrawn except in cases of rebellion or invasion.

TITLE II CANNOT STAND

Mr. President, the report of the Wickersham Commission which was issued back in the days of the Hoover administration should be required reading for all Members of Congress who wish to overturn the Miranda, Mallory, and Wade line of cases.

That report carefully documents a long and most unfortunate history of the shockingly prevalent use of third-degree tactics in this country to wring confessions from arrested persons.

> The use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions—
>
> The Commission said—
>
> is widespread. Protracted questioning of prisoners is commonly employed. Threats and methods of intimidation, adjusted to the age or mentality of the victim, are frequently used.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Hawaii yield to the Senator from Louisiana?

Mr. FONG. I yield.

Mr. LONG of Louisiana. Will the Senator tell me the date of that quotation?

Mr. FONG. I do not have it. I will supply it to the Senator.

Mr. LONG of Louisiana. My impression is that that is badly out of date. If it is current, I would like to know.

Mr. FONG. I will furnish it to the Senator.

Some of the third-degree tactics used were to apply a rubber hose to the victim's back or to the pit of his stomach; kicks in the shins or beating his shins with a club; striking the side of the victim's head with a telephone book.

Three Supreme Court cases handed down after the Wickersham report strongly bolstered the findings in the report.

In 1936, in *Brown* v. *Mississippi*, 297 U.S. 278, the Court reversed the conviction of three Negroes for the killing of a white man on the ground that the Mississippi State courts, including the supreme court, had erred in ruling that their confessions were voluntary. As described by one of the State supreme court judges, the defendants "were made to strip and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it, and they were likewise made by the said deputy definitely to understand that the whipping would be continued unless and until they confessed, and not only confessed, but confessed in every matter of detail as demanded by those present."

That was the first case in which the U.S. Supreme Court invalidated a confession as involuntarily made under the due process clause of the Constitution.

In another case, *Ashcraft* v. *Tennessee*, 322 U.S. 143 (1944), the defendant was subjected to "one continuous stream of questions" for 36 straight hours by relays of officers. The confession, which had been deemed voluntary by Tennessee courts, was declared invalid by the U.S. Supreme Court.

In 1945, in *Malinski* v. *New York*, 324 U.S. 401, the High Court struck down a confession which had been declared voluntary by the New York courts. The suspect had been kept in a hotel room incommunicado and completely unclothed for hours in order to "let him think that he is going to get a shellacking."

It was precisely to put a stop to such practices of uncivilized brutality—such medieval third-degree savagery—that the U.S. Supreme Court has handed down a series of 22 rulings, involving 26 defendants, in the 25 years since the Brown case, setting forth minimal standards of the rights of all those accused of committing crimes.

Absent these most basic safeguards, such accused persons would be placed, once again, at almost the total mercy of those law-enforcement officers disposed to using third-degree tactics.

Passage of title II could bring back the wanton police brutality of the past. This we must prevent.

Our struggle to achieve fairness and justice in our criminal process has been long and arduous. We have come a long

way from the brutality of the past. The decisions of the Supreme Court have been forward-looking and enlightened. Let us not retrogress.

Mr. President, I do not stand solitary and alone in strongly objecting to each provision of title II of the bill. An extremely broad segment of our American community of legal scholars, thinkers, and technicians believe as I do.

The criminal law section of the American Bar Association is strenuously opposed to this title.

Just yesterday, the Board of Governors of the American Bar Association, speaking for 130,000 lawyers, unanimously adopted a resolution opposing title II.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. FONG. I yield.

Mr. ERVIN. I have been a dues-paying member of the American Bar Association for approximately 40 years. They are not speaking for me, and they are not speaking for thousands of other lawyers I know.

Mr. FONG. But does not the board of governors represent the 130,000 members of the American Bar Association, just as the Senate of the United States represent the the citizens of our various States? Apparently, the Senator from North Carolina is in the minority in that distinguished membership of lawyers.

Mr. ERVIN. Mr. President, they do not represent me and thousands of other lawyers, and this is not the first foolish decision they have made, either.

Mr. FONG. The Judicial Conference of the United States has expressed its disapproval of all of the component parts of title II except the provisions dealing with the Wade case, which it has not yet had time to consider, as this is a recent case.

The council of the American Law Institute just last week issued a report saying that too little is known about the impact of the Supreme Court's confessions decisions to serve as a basis for legislation. This ALI report, signed by a former director of the National Crime Commission and other legal scholars, pointed to research surveys in eight cities showing that little is known of the actual effects of Miranda on law enforcement.

The distinguished Senator from Maryland [Mr. TYDINGS] has reported that he has heard from 43 law schools from across the country—letters signed by some 212 legal scholars including 24 law school deans. These letters unanimously urge that title II not be enacted into law.

As Dean Louis H. Pollak, of the Yale Law School, said:

> Title II is, in my judgment, dangerous, retrograde legislation, which would, if enacted into law, strip American citizens of vital and hard-won procedural rights.

As a member of the Committee on the Judiciary I deplored greatly the action of the committee in approving this title.

Mr. President, existing law is designed to assure that confessions are voluntary, that lineups are fair, that arraignments are prompt, and that defendants receive a full and fair hearing of their Federal claims in a Federal court.

Unless we are to reject these principals, title II cannot stand.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. Out of whose time is the quorum being taken?

The PRESIDING OFFICER. The time is being taken out of the time yielded to the Senator from Hawaii [Mr. FONG] by the Senator from Maryland [Mr. TYDINGS].

The bill clerk proceeded to call the roll.

Mr. TYDINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TYDINGS. Mr. President, I yield the floor.

Mr. HRUSKA and Mr. SCOTT addressed the Chair.

Mr. McCLELLAN. Mr. President, I yield 5 minutes to the Senator from Nebraska.

The PRESIDING OFFICER (Mr. LONG of Louisiana in the Chair). The Senator from Nebraska is recognized for 5 minutes.

Mr. HRUSKA. Mr. President, title II of S. 917 deals with a crucial part of our criminal justice system: the trial court. It is here that our Anglo-Saxon jurisprudence has placed the burden of determining the guilt or innocence of an accused. Only the judge and jury are in a position to verify the facts and to determine the truth or falsity of the charges.

In recent years, the appellate courts have interfered substantially with this duty. Title II seeks to return the function to the trial court. Specifically, the title provides a legislative framework within which the trier of fact can determine the voluntariness of a confession. The following elements are enumerated and must be considered by the Federal trial court in determining the voluntariness of incriminating statements: First, the time elapsing between arrest and arraignment; second, whether the defendant knew the nature of the suspected offense; third, whether the defendant knew of his right against self-incrimination and that any statement could be used against him; fourth, whether the defendant knew of his right to counsel; and, fifth, whether the defendant actually had the assistance of counsel.

It also provides that in State cases a determination of voluntariness cannot be tried de novo by an appellate court using a cold record. Eyewitness testimony is declared to be admissible in Federal cases and again the scope of review in State and Federal appellate courts is limited. The final provision attempts to insure finality to State court decisions. The U.S. Supreme Court can review criminal decisions by appeal or certiorari, but collateral attacks on facts that were under the State courts jurisdictions is forbidden.

Because of my previous interest in the subject of confessions and my participation in hearings on Miranda against Arizona, held by the constitutional amendments subcommittee in 1966 and 1967, I propose to emphasize that aspect of title II in my remarks.

Historically, voluntary statements given in response to police questioning have been a highly acceptable and respectable method of proof.

They have been considered of the highest order of evidence.

It is an established fact that normally a man will not voluntarily admit guilt for a crime he did not commit, although there have been exceptions. The veracity of voluntary confessions is difficult to question particularly when they are corroborated. Let us remember that the major purpose of a criminal trial is to ascertain the truth.

Recent decisions of the Court seem to be, in the words of Justice White, an attempt "to bar from evidence all admissions obtained from an individual suspected of crime, whether involuntarily made or not." (Dissent in *Escobedo* v. *Illinois*, 378 U.S. 478, 495.) This is a wide departure from earlier rulings of the court and from the understandings of the bar and the general public.

Justice Frankfurter, speaking in *Watts* v. *Indiana*, 338 U.S. 49 (1949) stated the general rule regarding police questioning:

> A statement to be voluntary of course need not be volunteered. But if it is the product of sustained pressure by the police it does not issue from a free choice. When a suspect speaks because he is overborne, it is immaterial whether he has been subjected to a physical or mental ordeal.

In numerous cases, this same rule has been applied. As recently as 1963 the Court said in *Townsend* v. *Sain*, 372 U.S. 293:

> If an individual's will was overborne or if his confession was not the product of a rational intellect and free will his confession is inadmissible because coerced.

Recent court decisions have turned away from consideration of voluntariness as determined by the totality of the circumstances. Notably, the case of Miranda against Arizona has erected inflexible barriers that focus attention, not on the voluntary nature of the statements, but on the procedures which were followed. The importance of procedures is emphasized by Mathias against United States, decided on last Monday. There the court, simply noted that the defendant had not been given the Miranda warnings and reversed the conviction. And this questioning occurred during a civil investigation.

As a result of these arbitrary rules guilty men are going free and the police are unnecessarily hampered in their investigations. This is what section 701 seeks to correct.

It is important to understand precisely what section 701 seeks to accomplish. The report speaks of attempts to correct the imbalance between the rights of the individual and the rights of society. Perhaps this can be misleading if it is taken to mean that we must take rights from the one and give it to the other. We do not propose in this title or this section to take rights from the criminal suspect in order to protect the rights of society. Under our system of

government this is unnecessary. The true balance was struck by the Constitution itself. The fifth amendment states that no individual may be compelled to be a witness against himself. On the other hand, the Constitution does not state that he may not be questioned. Society has the legitimate right to seek all voluntary information regarding a crime. These two principles are not inconsistent; they are not mutually exclusive.

It must also be made clear that part A does not legislatively overrule the Miranda decision. It incorporates the guidelines of that decision into a statute. The main difference between title II and Miranda is that determination of the admissibility of a confession has been returned to the trial court where it belongs.

It is obvious that the four point warning devised by the court cannot realistically be applied to every situation. This would be a fiction in the fullest sense of the word. It would make law enforcement a game composed of following arbitrary rules instead of a search for justice. Senator SCOTT, in his individual views, cited the famous statement of Justice Cardozo:

> Justice, though due to the accused, is due the accuser also. The concept of fairness must not be strained until it is narrowed to a filament if we are to keep the balance true.

The Miranda safeguards can be realistic only if they are applied initially at the trial level. The judge and the jury acting independently can weigh the influence of each factor as it applies to the specific defendant. In this way the protection of the fifth amendment is insured.

In addition, it is obvious that voluntary statements, incriminating or not, are an important investigative tool. Good police work cannot be run on interrogations alone, but it is severely hampered if interrogations are not allowed. Questioning gives rise to leads, clues, and corroborative evidence. Use of questioning by the police should be allowed, subject only to the rule that no man may be compelled to make a statement.

Mr. President, for the reasons stated, I support title II and intend to vote for it.

Mr. President, the subject of this title has been thoroughly studied. The title has been deliberately processed legislatively. Proposals for further delay should be rejected in the light of the current situation of deterioration of law enforcement in America and the runaway crime statistics which are lurid, and more lurid than the tales of yesterday that rubber hoses were applied to the backs of prisoners in the brutal securing of confessions on an involuntary basis.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. Mr. President, will the Senator yield to me for 1 additional minute?

Mr. McCLELLAN. I yield 1 additional minute.

Mr. HRUSKA. Mr. President, the urgency of the situation should be apparent to all. This measure will help toward a fair judicial procedure in criminal prosecutions; a procedure in compliance with constitutional requirements.

Congress should not procrastinate. It should face up to its responsibility; it should act now on the substance and merits of title II.

Mr. President, if I have any time remaining, I yield it back.

Mr. LAUSCHE. Mr. President, will the Senator yield to me?

Mr. McCLELLAN. Mr. President, I yield 5 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 5 minutes.

Mr. LAUSCHE. Mr. President, I rise to give support to title II. As a preliminary to my statement I desire to point out to Senators that I was a judge for a period of 10 years. Six of those years were on the common pleas bench of Cuyahoga County, and 3 of the 6 years I spent as presiding judge in the criminal court. As presiding judge I took pleas under indictments in which the defendant pled either guilty or not guilty.

I also presided over trials for a period of 3 years, including trials of first degree murder cases, robbery, rape, burglary, larceny, and all the other crimes covered by the statutes of Ohio. Cuyahoga County at that time had a population of 1.4 million. The number of cases that came before the court were many and varied. I had the opportunity, of course, constantly to have brought before me charges that confessions were extorted by the police through brutality and other means of intimidation. It is on that basis that I make this presentation and give my practical service in this field as a background.

Mr. President, the system of jurisprudence in the United States is taken primarily from the Anglo-Saxon concept of protecting individuals charged with crimes. The framers of the Constitution of the United States, sacredly and in a hallowed way, having knowledge of the offenses and many abuses perpetrated in despotically ruled countries, saw fit to write into the Constitution protections for the accused in a criminal case.

They wrote into the Constitution the provision that no person shall be compelled to testify unless he so desired; that no person should be compelled to give testimony that might incriminate him; that no accused be denied the right to meet his accusers face to face; that a person shall be immune from cruel and unusual punishment; that a person shall be entitled to bond; and that a person shall be entitled to a trial by a jury of his peers without delay.

Those provisions were written into the Constitution to insure that no inhabitant of the United States charged with a crime shall be subjected to practices which in the end would deny him a fair trial.

The Constitution was interpreted by judges of the Supreme Court, and others, for a period of about 177 years before the Miranda decision was rendered. Never did any of the judges, during that period resulting in ultimate law, declare that the Constitution gave to an accused those rights which were given to him in the Miranda case.

In the Miranda case, the Court held that unless specific, arbitrary conditions were met, a confession, although truthful, shall not be admissible in testimony.

It was always my concept that at the trial of a case the principal objective was to learn the truth, that confessions made under circumstances indicating truthfulness, and not extracted by intimidation or brutality, were admissible in evidence. Under the law, when an accused claimed that he was forced to make a confession, the judge retired the jury and then made interrogation of the police and the accused, and the judge then determined whether the admission was voluntarily made.

He called back the jury and he said, "Ladies and gentlemen of the jury, the accused contends that a confession was extorted from him. It is your duty to determine, under all the circumstances, whether the confession was voluntarily made, or extorted from him by intimidation or brutality. If you conclude that there was intimidation or brutality, you must disregard the confession."

That law was applicable for 177 years. Along came the Supreme Court and declared that it no longer stood.

Mr. President, justice has been hindered by the Miranda case. The only way to restore protection to the innocent is to make certain that in the trial of cases the primary objective shall be the quest for truth and not the imposition of arbitrary rules which have no relationship to the truthfulness of the confession given. In the Miranda case the Supreme Court amended the Constitution in nonconformity with the procedure set forth in that sacred document specifying how amendments shall be made. In other words it usurped the powers reserved to the people, the Congress, and the separate State legislatures.

Mr. TYDINGS. Mr. President, I yield 3 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 3 minutes.

Mr. PASTORE. Mr. President, I shall vote for the amendment to delete title II from the bill.

In doing so, I am conscious of the fact that two very important Supreme Court cases, Escobedo and Miranda—which are the genesis of the activity in this regard by committees of Congress and this particular bill—were decided by a vote of 5 to 4.

That, in a sense, is regrettable, because it can be argued by the proponents of the title that the restrictions imposed by these decisions on the prosecution of criminal cases are the result of one man's mind.

Then, of course, so far as the Mallory case is concerned, I understand it was a unanimous decision of 9 to 0.

Mr. President, if I thought for one moment that title II of the pending bill was reaching out to apprehend and assist in the conviction of gangsters and racketeers who engage in organized crime in this country, I would certainly vote for this title.

However, title II would not do this because we know that racketeers and gangsters do not make confessions, voluntary or otherwise.

The person title II hurts is that miserable wretch who is apprehended and may not be in a position to know what his constitutional rights are.

Thus, in order to guarantee his constitutional rights, the Supreme Court rendered some very important decisions which have been the subject of exhaustive discussion on the floor of the Senate. I shall not take up the time and patience of my colleagues to go through that.

The thing that disturbs me in title II is the fact that the legislative body is reaching out now, not only to overrule decisions of the Supreme Court, but also to prescribe rules of evidence contrary to the constitutional rights of the defendant.

That, of course, is a very serious thing, because I think it chips away at the very fundamental concepts of our democratic process, which is based on three separate branches and powers—the legislative, which is our function, to make the law; the executive, whose responsibility it is to enforce the law; and the judiciary, whose function is to interpret the law.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. PASTORE. I yield.

Mr. ERVIN. I will ask the Senator from Rhode Island if it is not recognized that under the Constitution the Congress has the power to prescribe the rules of evidence for the Federal courts.

Mr. PASTORE. Yes; but the court has jurisdiction to make those rules. We have delegated that authority. That is the way the Federal rules came about. In my State, we are initiating State rules of procedure equivalent to the Federal rules. That is a delegation of power. We are not doing that here. We are not saying the Federal courts shall make such rules as in their judgment will facilitate the prosecution of criminal cases. We are telling the Federal courts, in no uncertain terms, that from now on, they cannot interpret the Federal constitutional rights of individuals, once a case has been decided by a State court.

Mr. ERVIN. Mr. President, will the Senator yield for another question?

Mr. TYDINGS. Mr. President, will the questioner take it out of the time of the distinguished Senator from Arkansas?

Mr. ERVIN. Yes. I yield 30 seconds. Does the Senator from Rhode Island not know that the only power we have delegated to the court is the power to prescribe rules of procedure, and not rules of evidence?

Mr. PASTORE. That is right. I do not know of any legislative body that has ever enacted rules of evidence restricting the constitutional rights of the defendant, and I have been around 61 years. I prosecuted criminal cases for 5 years. I was in charge of the criminal calendar in the State of Rhode Island. I think I know something about the problems of prosecuting cases. I think I know something about the problems of law enforcement. I think I know something about the problems that prosecuting attorneys have in prosecuting cases. But this approach in title II is going away down the road. I do not think we can, for the purpose of expediency, disturb the bedrock of constitutional rights. We are trying to dictate by legislation what the constitutional rights of an individual are, and that is not our function.

I repeat that if I thought for 1 minute that we were going to eliminate gangsterism and organized crime in this country through title II, I might have second reflections on this subject, but these gangsters are pretty smart cookies when they are arrested. They know they can call for their lawyers. They remain silent and rest on the fifth amendment. They just do not talk. So, so far as organized crime is concerned, this proposal will be of no help unfortunately.

All I am saying, is, as has been stated time and time again, by the American Bar Association, that every man before a court of justice in this country is entitled to all of his constitutional rights; and the Supreme Court has interpreted what those rights are. I do not think it is the function of the legislative body to interpret the Constitution.

For those reasons I shall vote for the Tydings amendment.

The PRESIDING OFFICER (Mr. BURDICK in the chair). Who yields time?

Mr. ERVIN. Mr. President, on behalf of the Senator from Arkansas, I yield 5 minutes to the Senator from Pennsylvania [Mr. SCOTT].

Mr. SCOTT. Mr. President, I would like to take this opportunity to make clear my position on title II of the Omnibus Crime Control and Safe Streets Act.

I strongly favor that part of title II which will permit voluntary statements made by an accused person to be admitted into evidence at a trial where the judge determines that such statements were truly voluntary under all the circumstances. Such a procedure is a marked improvement over the recent Supreme Court decision in the Miranda case which, while aimed at preventing abuses of the accused's constitutional rights—and rightly so—seemed to overlook the right of the public to be free of abusive activities committed by criminals. This section of title II contains the necessary safeguards to enable the judge and jury to search for the truth within the bounds of constitutional guarantees and has my support.

I believe it would be in derogation of the strength and integrity of all the trial judges and courts of this country to say they could not be trusted, subject to proper rights of appeal, to exercise this judgment, as they are charged with the exercise of all other judgments, in connection with a trial.

However, after a long and careful examination of this title, I have grave reservations about the remaining provisions. This is because of the serious threat which they represent to the judiciary—an institution which has always been, since the beginning of the Republic, a strong guardian of our liberty.

Those sections curtailing the appellate jurisdiction of Federal courts—including the Supreme Court—raise a serious constitutional question because they will prevent the Federal judiciary from reviewing State court action where a Federal right has been asserted. Moreover, the Supreme Court has long been recognized as the appropriate arbiter with authority to resolve inconsistent interpretations of the Constitution by State and Federal courts and to maintain supremacy of Federal law against conflicting State laws. The abolition of Supreme Court jurisdiction encompassed in these provisions would prevent such an arbitral role and would distort the delicate balance existing in our tripartite system of government, thus encouraging the type of basic confrontation that is best not encouraged. Whatever the scope of the constitutional authority given Congress to shape the appellate jurisdiction of the Supreme Court, none should doubt that its exercise must be consistent with the important role played by the Court in our system of government.

The section abolishing the habeas corpus jurisdiction of the Federal courts with respect to State criminal convictions also presents serious constitutional difficulties. The Constitution specifically provides:

> The privilege of the Writ of Habeas Corpus shall not be suspended unless when in Cases of Rebellion or Invasion the public safety may require it.

For a century, the Federal courts have appropriately utilized the great writ to vindicate the basic constitutional rights of American citizens, often after shocking denials of such rights had gone uncorrected in State courts.

This section would make appeal or certiorari to the Supreme Court the sole Federal review of Federal claims by State prisoners. However, in view of the caseload and the discretionary nature of these appeal procedures in the Supreme Court, this alternative remedy appears to represent more form than substance. The effect of this section combined with other provisions limiting the appellate jurisdiction of the Federal courts could well mean that many State defendants will have no Federal review available whatsoever, no matter how meritorious their Federal constitutional claim.

Those urging the enactment of this provision say it is necessary to prevent the abuses of the Federal writ of habeas corpus by State prisoners. In 1966, the Congress amended the Federal habeas statute in a well-considered attempt to deal with admitted abuses of the writ. Those who would limit the great writ bear the burden of demonstrating that the 1966 amendment was grossly inadequate to meet the alleged evils.

Therefore, while I cannot, because of their sweeping and altogether too comprehensive nature, support the various motions to strike title II in its entirety, or to submit to a study the matter covered by that title—a matter which has already received national attention and the attention of the courts, lawyers, and judges everywhere, as well as of the legislative bodies. I can and will support motions to strike certain sections of title II limiting the power of the Supreme Court to hear appeals as that power is now preserved.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SCOTT. May I have 1 additional minute?

Mr. ERVIN. I yield 1 minute to the Senator from Pennsylvania.

Mr. SCOTT. For example, I think the habeas corpus limitations ought not to be in this bill. On the other hand, I believe we should let the voluntariness of confessions be determined by the trial court, subject to the right of appeal, and subject to the full right of appeal and habeas corpus proceedings through the Supreme Court.

Therefore, when a division is asked on amendment No. 788—and, I understand there probably will be five or six votes—I expect to support retention of the proposed new section 3501 of title 18, which I believe properly serves to strike a better balance between the rights of the accused and the rights of the accuser, the State or the people, but I shall have to oppose the remaining provisions of title II which are in derogation of the Federal courts.

In closing, Mr. President, I call attention to the footnotes on pages 233 and 234 of Senate Report No. 1097, the committee report on the pending bill, which say:

> Senator Scott does not associate himself with those views in support of limiting the appellate jurisdiction of federal courts and curtailing habeas corpus proceedings.

I also call attention to my statement of individual views on the pending bill that appears on pages 209 to 219 of the committee report, especially my views on title II on pages 211 to 214.

Mr. CLARK. Mr. President, will the Senator from Maryland yield me 5 minutes?

Mr. TYDINGS. I yield 5 minutes to the Senator from Pennsylvania.

Mr. CLARK. Mr. President, the parliamentary situation in which we find ourselves is extremely obscure, with motions to strike title II, and then motions to strike title II with amendments, and further perfecting amendments threatened, with consequent grave difficulty for an individual Senator in determining just what the particular issue will be with respect to each of the many votes we shall be called upon to make today and tomorrow.

Accordingly, I should like to make my position quite clear on the basic issue as to whether or not title II should be in this bill at all. I shall, with my vote, attempt to support all efforts to strike title II, or as much thereof as is comprised in any one of the votes we may be called upon to make.

I accordingly support the simple motion of the Senator from Maryland to strike title II; and, if that should fail, I shall support any other motion to limit the effect of title II.

That title deals, as we know, with the admissibility in evidence of confessions, the admissibility on review by Federal courts of confessions in State cases, the admissibility in evidence of eye-witness testimony, and procedures in obtaining writs of habeas corpus.

In my judgment, without getting into the technicalities of each of these quite technical subjects, the legislature would be wise indeed to leave the whole matter to the judiciary, and not to attempt to interpose our judgment in terms of reversing decisions of the Supreme Court of the United States, or, indeed, in terms of attempting to limit the jurisdiction of the Supreme Court.

I believe that a grave constitutional question is involved as to whether we have any right to reverse those decisions or to limit that jurisdiction under the Bill of Rights, or, indeed, under the 14th amendment as well. But laying aside the constitutional question, I believe the wisdom of the 100 Members of the U.S. Senate in attempting to overrule decisions of the Supreme Court is gravely to be questioned. Some of us like to pride ourselves on being great constitutional lawyers, and perhaps there are a few such in this body, although I will, I hope, be forgiven by my colleagues if I raise an eyebrow with respect to that assertion, particularly since very few of us are able to continue our practice of the law and appear before the Supreme Court, or even to make ourselves very familiar with recent decisions, in view of our very heavy legislative responsibilities and responsibilities in other areas.

Therefore, I would hesitate to impose my judgment on that of the Supreme Court of the United States in these matters of individual liberty, which have very technical aspects to them; and I would say also that I believe there is some animus against the Supreme Court in certain parts of this body, which I deplore. I believe further that there is a strong tendency in the Senate to overestimate the impact of various Supreme Court decisions on the very salutary war we are presently conducting against crime.

For example, I know that there is no reliable evidence that the rules relating to the admissability of confessions affect crime very much one way or the other. Reporting on the first systematic study ever made on the significance of confessions, Justice Sobel of the New York Supreme Court said:

> Confessions do not affect the crime rate by more than one hundredth of 1 percent, and they do not affect the solving of crime by more than 1 percent.

I, of course, like all Members of the Senate, strongly support all efforts to combat organized crime and to put a stop to ordinary crime, and crimes of violence in particular. That is one reason I supported the strong gun control bill last week. But I believe when we get into the area of tampering with decisions of the Supreme Court and its jurisdiction, we are operating in a field where we are not experts, and we had better let well enough alone.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arkansas has 46 minutes remaining, and the Senator from Maryland has 28 minutes.

Mr. McCLELLAN. I yield 5 minutes to the Senator from North Carolina.

Mr. ERVIN. Mr. President, those who believe that the American people should be ruled by a judicial oligarchy composed of five Supreme Court Justices, rather than by the Constitution of the United States, persist in asserting that there is no evidence that these decisions have had any adverse effect upon the administration of criminal laws. They rely, as a basis for that assertion, upon three articles appearing in law reviews, composed either by theoreticians of law or by students.

Even those articles, as I pointed out yesterday, show that many crimes, in fact a very substantial percentage of crimes, cannot be solved without the interrogation of suspects.

For example, the so-called New Haven article showed that a substantial percent of the comparatively few crimes there investigated could not have been solved without interrogations. The University of Pittsburgh Law Review article showed that there were confessions in 58.6 percent of the homicide cases in Pittsburgh before Miranda, only 31.3 percent after Miranda; that there were confessions in 62.4 percent of the robberies in Pittsburgh before Miranda, and 36.7 percent after Miranda; that before Miranda, 61.2 percent of the robbery suspects in Pittsburgh confessed; 28.9 percent after; that before Miranda, 59.3 of the homicide suspects in Pittsburgh confessed and only 31.6 percent after Miranda; and that the proportion of suspects making statements after Miranda dropped about half, or from 48.5 percent to 27.1 percent, in homicide, robbery, burglary, auto theft, and rape.

In other words, the very studies which the opponents of title II invoke to show that Miranda had no adverse impact upon the enforcement of criminal law prove exactly the contrary.

But let us depart from those who deal with these matters from a theoretical standpoint, and consider what those who deal with them from a practical standpoint have to say. I invite the attention of the Senate again to the report of the hearings of the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary—hearings which fill 1,205 pages and which are replete with testimony of prosecuting attorneys, judges, and other persons concerned with law enforcement, making it as clear as the noonday sun that these decisions have had a tremendous adverse impact upon law enforcement in this country.

Perhaps the most experienced prosecuting attorney now in office is Frank S. Hogan, the New York County district attorney. I read these words from his statement, as found on page 1120 of the hearings of the Subcommittee on Criminal Laws and Procedures. He says:

> A survey of the 91 homicide cases in our office awaiting trial or disposition in the fall of 1965 disclosed that 25 of the cases would have lacked legally sufficient evidence for trial without the defendant's statement.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ERVIN. I ask for 2 additional minutes.

Mr. McCLELLAN. I yield the Senator from North Carolina 2 additional minutes.

Mr. ERVIN. I continue to read:

Our Homicide Bureau has kept a case by case tabulation of all suspects questioned in homicide cases since *Miranda*. From June 13, 1966 to June 13, 1967, 216 homicide suspects were questioned. Of these, 64 refused to make any sort of statement to the Assistant District Attorney after receiving a *Miranda* warning. Of those who made a statement, 75 inculpated themselves. In sum, after receiving the required warning, about 30% of the 216 homicide suspects said nothing, 35% gave exculpatory statements, and 35% chose to incriminate themselves. This represents a marked change from pre-Miranda times when it was the Homicide Bureau experience that rarely did a suspect refuse to make any kind of statement, even if it was only to protect his innocence.

He also states:

To summarize these figures in the most tentative way, and taking account of our case-by-case experience in the investigation and prosecution of serious criminal charges, I would say that the stringent requirements of *Miranda* have significantly increased the chances that a criminal will escape judgment, where under previously prevailing fair standards he would have been convicted for his crime.

Manifestly, when suspects in custody are advised, in effect, that they should not confess, they are not going to confess. And when a lawyer is summoned to the police station to represent them, before they can be questioned, that lawyer is going to tell them not to say anything if he has any degree of intelligence above that of an idiot.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, earlier I had printed in the RECORD some letters.

I ask unanimous consent to have printed at this point in the RECORD a letter from Richard Kilbourne, district attorney of Clinton, La., a letter from Byron G. McCollough, attorney of Houston. Tex., and a copy of a letter that I have had placed on the desk of each Senator—the letter being from Dr. N. M. Camardese, past president of the Huron County Medical Society, Norwalk, Ohio.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DISTRICT ATTORNEY, 20TH
JUDICIAL DISTRICT OF LOUISIANA,
May 7, 1968.

Hon. JOHN L. McCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR McCLELLAN: I read about your recent remarks in the Senate about the pending crime control bill. I thoroughly agree with your statement and I am taking the liberty of sending you a copy of a letter on the subject which I wrote to Congressman Wendall Wyatt several months ago.

With best wishes, I am

Respectfully yours,

RICHARD KILBOURNE.

LAW OFFICES OF McCOLLOUGH AND
McCOLLOUGH,
Houston, Tex., May 17, 1968.

Hon. JOHN L. McCLELLAN,
U.S. Senate Building,
Washington, D.C.

DEAR SENATOR McCLELLAN: Both as attorney and as a citizen, I applaud your views on law enforcement as expressed to the Senate on May 1, 1968, and as reported in *U.S. News & World Report*, May 20, 1968, page 51.

I respectfully urge that you and your colleagues use every possible effort to obtain passage of the Crime-Control Bill now under consideration in the Senate. Congress owes the law-abiding people of the nation the duty to overturn or modify recent decisions of the Supreme Court, and to make it impossible for the Supreme Court or other Federal Courts to continue their present wholesale reversal of State Court convictions.

Thanking you for your splendid efforts in this direction, I am

Yours truly,

BYRON G. McCOLLOUGH.

NORWALK, OHIO, *May 16, 1968.*

GOD—OR THE SUPREME COURT?

DEAR SENATOR McCLELLAN: May I take the liberty of congratulating you on your recent statements in the Senate Judiciary Committee Reports on Crime (May 1, 1968).

After reading the article, "Run Away Crime; Will Congress Act?", in the *U.S. World & News Report*, May 20, 1968, might I please ask your courtesy to ponder the following with me,—please.

The disease overpowering beautiful America, is Socialism and possibly eventual Communism.

The symptoms are: progressive and increasing lack of belief in God; moral corruption and decay; abandonment of individual responsibility; and a sickly attitude of wanting rights without fulfillment of prerequisite obligations and responsibilities.

The disease carriers are the criminals—multiplying at a fantastic rate—approximately ten times the rate of the general population.

Our leaders (in the main doctors of law and many of our legislators) are committing grossly negligent malpractice. They would indeed seem to protect the "disease carrier"—(the criminal)—rather than the helpless prey—(the lawful abiding, overburdened, and exploitedly overtaxed citizen). Progression in this course will surely lead to destruction and death of our society. The history books tell us so unfailingly.

Let me enumerate more specifically:

1. In many of its recent decisions the United States Supreme Court has caused America and humanity irreparable damages.

2. Even swift congressional action to reverse same, will not ever undo the harm the Supreme Court has caused.

3. The Almighty God offers forgiveness for crime (or sin, as our religious leaders would prefer to call it).

4. Sincere confession and sincere true sorrow by the offender are the prerequisites for forgiveness.

5. Confession—defined—"admission of guilt."—(which the Supreme Court prohibits).

6. True sorrow is a resolve not to commit again crime, offense,—or the afore mentioned sin.

7. The domain of forgiveness belongs to God.

8. Too, man has God's promise for absolution.—(in Christianity—through Christ, the Redeemer, His Son.)

9. Restitution (by the Criminal) in a morally, Godly oriented society, is a prerequisite for absolution. This would mean:

(a) Direct restitution by the criminal to the one "crimed" against, if possible.

(b) Acceptance of the just punishment, by the guilty criminal,—imposed by the elected or appointed judges (and jury) of such a Godly, morally oriented society.

(c) Or, self-imposed penance (by the guilty criminal), due to his Godly smitten conscience.

Now, the Supreme Court in many of its most recent decisions has seemingly and perhaps in fact done the following:

1. Chosen to deliberately protect the criminal.

2. Ignored, transgressed—or caused to be transgressed—the God-given Rights of law abiding individuals (which it has a right, indeed, to protect).

3. Undermined the vested powers of our law enforcing agencies such as the police force, courts, etc., etc.

4. Has made a mocking travesty of Moral Law, Justice, and Order.

5. Has contributed immensely to crime and the demoralization of this—the greatest Country God gave the world—ever.

6. Has helped to make a mockery of moral teachings by Parents to their children, by:

(a) breeding contempt by children for the parents.

(b) thereby ensuring immensely larger "crops" of future criminals.

7. Has fostered contempt for authority—thereby contempt for God, since:

(a) in a Godly oriented, moral society—all proper Authority stems from God.

(b) having contempt for God, man can hardly be expected to have "love" for his 'neighbor'.

(c) and how much more contempt has it fostered in the "criminal" for his victim, or society in general?!

8. Has abrogated the powers of God:

(a) by letting (or causing to let) the criminal go free—unconditionally. Indeed this is—

1. Supra-God.
2. Illogical.
3. Unreasonable.
4. Unfair to criminal and victim alike.
5. Chaotic.

(b) by preventing the criminal from confessing freely.

1. This is unfair to the criminal.
2. It is ungodly.
3. It will have a tremendously great tendency to add to the mental illness and emotional instability of the criminal.
4. It almost prohibits or precludes the possible rehabilitation of the criminal—ever.

Sir, Honorable McClellan, I could go on with much more. But it would be unfair to encroach on your unhumanly busy schedule.

In summary—what the Supreme Court has done in many of its recent decisions has, I fear, laid the foundation—very solidly—for the destruction of this—the greatest country God gave the world—ever!

The Administration, with its reckless and fiscal irresponsibility and headlong plunge into Socialism—guided and aided by all the Socialistic Schemers—are building rapidly onto the above foundations of destruction.

The innumerable, utopian, heaven-on-earth-for-all great Society schemes—would be more appropriately labeled—'manifestos for destruction of our society'.

Of twenty-one major civilizations, nineteen have perished not from outer conquest—rather, from corruption and evaporation of belief (faith) within.

Unless we change our ways, we shall be the twentieth to perish. We are defying both God and History. We will become bankrupt and our form of representative constitutional government will be destroyed.

Strangely, too,—it would seem—that many of our presently campaigning politicians would prefer to accelerate the tempo to 'allegro' and prefer to 'fiddle as Rome (America) Burns!!

God help America!

With warmest best wishes and thanking you most deeply for your tireless efforts to restore sanity when, seemingly, schizophrenic and paranoiac suicidal insanity seems to abound.

Most respectfully yours,

N. M. CAMARDESE, M.D.,
Past President,
Huron County Medical Society.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield to the Senator from Ohio.

Mr. LAUSCHE. Mr. President, I have received a telegram from the prosecuting attorney of Scioto County, Ohio, urging passage of title II.

Mr. McCLELLAN. Mr. President, I also ask unanimous consent to have printed at this point in the RECORD a copy of the letter that I addressed to all Senators at the time the Senate Judiciary Committee was holding hearings on title II, on the Miranda and the Mallory issue just as it is in the pending bill.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEBRUARY 20, 1967.

U.S. SENATE,
Washington, D.C.

DEAR SENATOR: On January 25th I spoke in the Senate and introduced five bills designed to combat the growing menace of crime and to alleviate the danger caused by recent 5–4 Supreme Court decisions. My speech and the remarks of other Senators appear in the CONGRESSIONAL RECORD, volume 113, part 2, commencing on page 1582. I call your attention particularly to S. 674, a bill to amend title 18, United States Code, with respect to the admissibility in evidence of confessions, and S. 678, a bill to prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses, and for other purposes.

The first of a series of public hearings on these bills will be held by this Subcommittee on March 7th, 8th and 9th. If we are to secure the enactment of legislation in this area we will need the vigorous support of able members of the Senate and House of Representatives. Therefore, the Subcommittee on Criminal Laws and Procedures will welcome your comments on these proposals and will be glad if you will testify before the Subcommittee and give us the benefit of your counsel and recommendations and your views regarding any other practicable steps which you think are necessary to stem the tide of this constantly increasing peril.

If you wish to appear and testify, kindly advise the staff on Extension 3281 so that your appearance may be scheduled at your convenience.

With kind personal regards, I am

Sincerely yours,

JOHN L. MCCLELLAN,
Chairman.

Mr. McCLELLAN. Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article entitled "Miranda Ruling Fought in Senate," written by David Lawrence, and published in today's Washington Evening Star.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MIRANDA RULING FOUGHT IN SENATE

(By David Lawrence)

The United States Senate has been considering a bill which would remove some of the technicalities in law enforcement procedures that have permitted murderers and other criminals to escape punishment. Sen. John L. McClellan of Arkansas, one of the veteran members of the Senate Judiciary Committee, has issued a memorandum explaining the proposal that would permit a trial judge to decide whether a confession has been made voluntarily. It would leave it to the jury to determine how much weight shall be given to a confession.

This attempt to correct Supreme Court decisions has been denounced by other senators as an assault on the independence of the judiciary and on the Constitution itself.

But many of the critics either have not read the Constitution or have forgotten what it says about the power of Congress to limit the jurisdiction of the Supreme Court. Article III of the Constitution reads as follows:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

Congress has rarely utilized this power, but the crime crisis in America has focused attention on the part the courts have unwittingly played in giving freedom to criminals. McClellan, in his latest memorandum, criticizes particularly three Supreme Court rulings—two of which were rendered by a 5-to-4 decision—and declares:

"These decisions have set free many dangerous criminals and are daily preventing the conviction of others who are guilty. How can the freeing of known, admitted, and confessed murderers, robbers, and rapists by the courts, not on the basis of innocence, but rather on the pretext of some alleged, minor, or dubious technicality be justified?

"Gangsters, racketeers, and habitual criminals are increasingly defying the law and flaunting duly constituted authority and getting away with it. As a consequence, public confidence in the ability of the courts to administer justice is being destroyed. Until the courts, and particularly the United States Supreme Court, become cognizant of this damaging trend and begin to administer justice with greater emphasis on truth and a deeper concern for the protection of the public, the crime rate will continue its upward spiral and the quality of justice will further deteriorate."

The most momentous opinion by the Supreme Court was handed down on June 13, 1966, in what is known as the "Miranda" decision. In that case, by a 5-to-4 ruling, the court said that no confession, even if wholly voluntary in the traditional sense, could be admitted in evidence over the objection of a defendant in a state or federal proceeding unless the prosecution could show that certain warnings were given in advance. The prosecution also was required to prove that the suspect had voluntarily and "intelligently" waived his rights. In many instances, it was not possible to furnish such proof. This is why many senators are in agreement with Justice John M. Harland, who, in a dissenting opinion, said:

"We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, and that the court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation."

Thus many members of the Senate are reflecting the views expressed by the minority of the Supreme Court itself. McClellan says:

"The Constitution has not changed. A misinterpretation of it by five judges has sought to change it."

When such a division of opinion appears, it is natural for Congress to raise the question of how the jurisidiction of the Supreme Court should be defined to cover a certain type of case. The purpose, of course, is to have the judge and jury decide the ultimate guilt or innocence in criminal cases, rather than to have flat rules made in advance that would paralyze the prosecuting process.

Mr. McCLELLAN. Mr. President, a situation exists in which several conferences are going on and hardly any Senator is present on the floor on either side of the aisle. It is impossible to try to legislate in such manner, especially in a matter of this importance, without an opportunity for Senators to hear something about the matter before they vote.

I agreed to a unanimous-consent request. I did not know that this situation would develop. However, I can say now that if we continue to operate in this manner, I serve fair warning that there will be no more unanimous-consent requests granted during the pendency of the pending bill.

I have tried to expedite this matter. We have a very difficult situation here. I want to propound some parliamentary inquiries. I do not have to do that on my time. I will do it at an appropriate time. However, I want it to be known now, and those staff members who are present can so advise their Senators, that if the Tydings amendment is defeated and the substitute of the Senator from Michigan [Mr. HART] is defeated, there will be votes, and I mean votes. There will be a division, and there will be votes on each issue in title II.

Those votes will take place, and Senators will have the opportunity to vote for the parts of title II they want and to oppose the parts with which they disagree. However, we will get votes one way or the other on the separate issues, I hope it can be done when the substitutes are out of the way.

If they can be defeated, then the Senate can actually work its will and take the issues one by one and vote them up or down. When that is done, we will then have a clear expression of the will of the Senate.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time? Time is running against both sides equally.

Mr. McCLELLAN. Let it run, Mr. President, and we will get some Senators here.

How much time remains on each side?

The PRESIDING OFFICER (Mr. BURDICK in the chair). The Senator from Arkansas has 34 minutes; the Senator from Maryland has 27 minutes.

Mr. McCLELLAN. I will use 7 minutes and thus equalize the time.

Mr. President, much has been said to the effect that this proposal is an attack on the Supreme Court. I have stated heretofore, that irrespective of how we may view what we are trying to do to correct the grievous errors made in certain Court decisions, it is five members of the Supreme Court who have made attacks on the Constitution and have undertaken to amend it.

Beginning in 1896—I have not gone back beyond that—it has always been taken for granted that persons accused of crime did not need lawyers to advise them before they were questioned.

I cite the cases of United States against Wilson, decided in 1896; United States against Powers, decided in 1912; Cicenia against Lagay, decided in 1958; and Haynes against Washington, decided in 1963.

In those cases and the dissenters in Miranda, 32 Justices held contrary to

the Miranda majority decision, squarely on the point of whether persons accused of crime had to be advised of their rights and were entitled to have a lawyer before any questioning. Let us call the roll and see who some of the Justices were. I shall not mention all of them, but I shall name those who were among the most illustrious Judges ever to grace the Supreme Court:

Stephen Johnson Field, John Marshall Harlan, Oliver Wendell Holmes, and Charles Evans Hughes.

I am not attacking the Supreme Court; I am attacking only the erroneous decisions of the Supreme Court. I am defending the Supreme Court as it existed from the establishment of the Government down to the time of the Miranda decision. If that is an attack, let Senators make the most of it. Someone has got to do something to correct the condition.

These later decisions of the Supreme Court are not reducing the crime rate, according to the testimony given by the witnesses. Every Senator was asked to testify, if he wished to do so. No one was denied an opportunity to give the committee the benefit of his counsel, judgment, and views.

What we are considering today is a smokescreen. It is a diversionary tactic. The opponents of title II do not want to face up to the real issue. All I ask is that the roll be called and every Senator answer "Yes" or "No" to the question: Do you favor a continuation of court rulings that continue to push the spiral of crime upward and upward? To me, the latest decisions have no effect on reducing the crime rate. They are not in accordance with the views of many judges. They are not what the prosecuting attorneys want.

It is said that the condition needs more study.

While you study, while you fiddle, Rome burns. We had better quit fiddling, Mr. President. We had better quit dillydallying about this matter. We had better quit trying to find alibis and excuses as to why the law cannot be enforced and get down to enforcing it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. Time is running against both sides equally.

Mr. RANDOLPH. It is fair.

The PRESIDING OFFICER. It is fair.

Mr. McCLELLAN. Mr. President, I yield 2 minutes to the Senator from Ohio.

Mr. LAUSCHE. Mr. President, I spoke earlier, but my time was limited, and I did not have an opportunity to develop my thoughts.

The fact is that people throughout the entire country are in constant fear about the mighty power of the criminal. The innocent individual has been forgotten. The criminal has been edified. He has been put on a pedestal. Protections have been thrown around him never intended by the Constitution of the United States. All pronouncements have been made expanding and disregarding the constitutional provisions.

Whatever has been said by the Court has been a usurpation of power, the Court having assumed the power to amend the Constitution, without conforming to those prescriptions given by our forefathers in that document.

In George Washington's so-called Farewell Address, he pointed out that good intentions in trying to avoid the provisions of the Constitution, in supposedly promoting the rights of the individual, usually turn out disastrously. He pointed out the necessity to beware of that department of Government which, believing that it will serve the people, usurps powers not granted in the Constitution.

The Supreme Court of the United States, in my opinion, has usurped powers that do not belong to it. It has construed the Constitution to mean purposes never intended by the writers of the Constitution. The result has been a breakdown of law, the domination by criminals, and the subjugation of the innocent people to the criminals.

Mr. McCLELLAN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arkansas has 26 minutes remaining.

Mr. RANDOLPH. Mr. President, I would appreciate 3 minutes.

Mr. McCLELLAN. I yield 3 minutes to the distinguished Senator from West Virginia.

Mr. RANDOLPH. I have a question for the distinguished Senator from Ohio [Mr. LAUSCHE] who has just spoken. He has discussed, in colloquy with the Senator from Arkansas [Mr. McCLELLAN] the role of the Judges of the Supreme Court.

Mr. LAUSCHE. Yes.

Mr. RANDOLPH. It was recently reported in the press that Associate Justice William O. Douglas, in an address at the University of Vermont, attacked the U.S. Corps of Engineers, the Bureau of Public Roads, and the Bureau of Mines on the grounds that they were anticonservation. I shall not go into the allegations which were made, but I ask what, in the opinion of the Senator from Ohio, are the prerogatives, of a member of the Supreme Court in addressing himself to what he considers to be the current political problems of our country. As the Senator knows, the Bureau of Mines is concerned with the strip-mining problem, the Bureau of Public Roads, with the construction of roads; and the Corps of Engineers, with water resource development in connection with the States and their political subdivisions. The corps is primarily concerned with flood control and through it the protection of property and lives. These projects are designed as conservation projects for the purpose of improving water control and water quality and for providing increased recreational opportunities to the people of many areas of this country.

The Justice's speech was a strong indictment of these three agencies. At this time I am not interested in whether he was right or wrong for that is a matter of opinion. Does the Senator from Ohio believe that any Justice of the Supreme Court should address himself to this type of subject matter which is exclusively a legislative policy decision matter? Before I receive the response to my question, I will add that in my opinion such an aggressive attack is not in keeping with the judicial role. Such outspoken criticism lessens the effectiveness of the highest Court and its members.

Mr. LAUSCHE. In my opinion, a member of the Supreme Court should refrain in the utmost degree from participating in the discussion of questions that ultimately must be decided by a branch of the Government in the nonjudiciary.

The Justice of whom the Senator from West Virginia speaks has become warped in power. He is of the opinion that legislative functions, executive functions, and judicial functions shall best be exercised if his opinion is allowed to dominate. He has unknowingly allowed his social, economic, and political concepts to dominate his judgment on the Supreme Court, when his function was only to interpret the law.

Mr. McCLELLAN. Mr. President, will the distinguished Senator from Maryland elect to use some time now?

Mr. TYDINGS. Mr. President, I yield myself 7 minutes.

We must consider the decision in the Miranda case, which is under attack, in light of the background of those Supreme Court cases which preceded this decision. The first case which reached the Supreme Court in which the voluntariness of a confession was the issue preceded the Miranda case by some 30 years. At that time the sole issue of a confession was voluntariness.

If the proposal of the Senator from Arkansas, or title II is agreed to, the Supreme Court's rulings in effect will be reversed, or at least until the Court decides otherwise, and we will revert to the old voluntariness standard which each State could pass upon.

I think we should realize in the 30 years preceding Miranda the Supreme Court passed on some 22 "voluntary confessions" involving 26 defendants.

These confessions were ruled "voluntary" by the high courts of their States. Then, upon review of the facts in evidence only in the State court record, these 22 confessions were reversed and found not to be voluntary by the U.S. Supreme Court.

Mr. President, the first case was Brown against Mississippi. In that case Chief Justice Charles Evans Hughes of the Supreme Court took the summary of the facts directly from the dissenting opinion of the justice of the Supreme Court of Mississippi. I shall read parts of that opinion into the RECORD:

> The crime with which these defendants, all ignorant Negroes, are charged was discovered about one o'clock p.m. on Friday, March 30, 1934. On that night one Dial, a deputy sheriff, accompanied by others, came to the home of Ellington, one of the defendants, and requested him to accompany them to the house of the deceased, and there a number of white men were gathered, who began to accuse the defendant of the crime. Upon his denial they seized him, and with the participation of the deputy they hanged him by a rope to the limb of a tree, and having let him down, they hung him again, and when he was let down the second time, and he still protested his innocence, he was tied to a tree and whipped, and still declin-

ing to accede to the demands that he confess, he was finally released and he returned with some difficulty to his home, suffering intense pain and agony. The record of the testimony shows that the signs of the rope on his neck were plainly visible during the so-called trial. A day or two thereafter the said deputy, accompanied by another, returned to the home of the said defendant and arrested him, and departed with the prisoner toward the jail in an adjoining county, but went by a route which led into the State of Alabama; and while on the way, in that State, the deputy stopped and again severely whipped the defendant, declaring that he would continue the whipping until he confessed, and the defendant then agreed to confess to such a statement as the deputy would dictate, and he did so, after which he was delivered to jail.

This was a voluntary statement so held by the highest court in Mississippi. If title II is agreed to, the Supreme Court no longer would have the right to review that decision of the Supreme Court of Mississippi.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. TYDINGS. No, I will not yield at this time.

The other two defendants, Ed Brown and Henry Shields, were also arrested and taken to the same jail. On Sunday night, April 1, 1934, the same deputy, accompanied by a number of white men, one of whom was also an officer, and by the jailer, came to the jail, and the two last named defendants were made to strip and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it, and they were likewise made by the said deputy definitely to understand that the whipping would be continued unless and until they confessed, and not only confessed, but confessed in every matter of detail as demanded by those present; and in this manner the defendants confessed the crime, and as the whippings progressed and were repeated, they changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers.

I am reading from the minority opinion of the justice of the Supreme Court of Mississippi, which was incorporated in the opinion of Chief Justice Charles Evans Hughes of the U.S. Supreme Court:

When the confessions had been obtained in the exact form and contents as desired by the mob, they left with the parting admonition and warning that, if the defendants changed their story at any time in any respect from that last stated, the perpetrators of the outrage would administer the same or equally effective treatment.

Further details of the brutal treatment to which these helpless prisoners were subjected need not be pursued. It is sufficient to say that in pertinent respects the transcript reads more like pages torn from some medieval account, than a record made within the confines of a modern civilization which aspires to an enlightened constitutional government.

All this having been accomplished, on the next day, that is, on Monday, April 2, when the defendants had been given time to recuperate somewhat from the tortures to which they had been subjected, the two sheriffs, one of the county where the crime was committed, and the other of the county of the jail in which the prisoners were confined, came to the jail, accompanied by eight other persons, some of them deputies, there to hear the free and voluntary confession of these miserable and abject defendants. The sheriff of the county of the crime admitted that he had heard of the whipping, but averred that he had no personal knowledge of it. He admitted that one of the defendants, when brought before him to confess, was limping and did not sit down, and that this particular defendant then and there stated that he had been strapped so severely that he could not sit down, and as already stated, the signs of the rope on the neck of another of the defendants were plainly visible to all. Nevertheless the solemn farce of hearing the free and voluntary confessions was gone through with, and these two sheriffs and one other person then present were the three witnesses used in court to establish the so-called confessions, which were received by the court and admitted in evidence over the objections of the defendants duly entered of record as each of the said three witness delivered their alleged testimony.

There was thus enough before the court when these confessions were first offered to make known to the court that they were not, beyond all reasonable doubt, free and voluntary; and the failure of the court then to exclude the confessions is sufficient to reverse the judgment, under every rule of procedure that has heretofore been prescribed, and hence it was not necessary subsequently to renew the objections by motion or otherwise.

The spurious confessions having been obtained—and the farce last mentioned having been gone through with on Monday, April 2d—the court, then in session, on the following day, Tuesday, April 3, 1934, ordered the grand jury to reassemble on the succeeding day, April 4, 1934, at nine o'clock, and on the morning of the day last mentioned the grand jury returned an indictment against the defendants for murder. Late that afternoon the defendants were brought from the jail in the adjoining county and arraigned, when one or more of them offered to plead guilty, which the court declined to accept, and, upon inquiry whether they had or desired counsel, they stated that they had none, and did not suppose that counsel could be of any assistance to them. The court thereupon appointed counsel, and set the case for trial for the following morning at nine o'clock, and the defendants were returned to the jail in the adjoining county about thirty miles away.

The defendants were brought to the courthouse of the county on the following morning, April 5th, and the so-called trial was opened, and was concluded on the next day, April 6, 1934, and resulted in a pretended conviction with death sentences. The evidence upon which the conviction was obtained was the so-called confessions. Without this evidence a preemptory instruction to find for the defendants would have been inescapable. The defendants were put on the stand, and by their testimony the facts and the details thereof as to the manner by which the confessions were extorted from them were fully developed, and it is further disclosed by the record that the same deputy, Dial, under whose guiding hand and active participation the tortures to coerce the confessions were administered, was actively in the performance of the supposed duties of a court deputy in the courthouse and in the presence of the prisoners during what is denominated, in complimentary terms, the trial of these defendants.

In 1942, the Supreme Court heard another case coming from the highest court of a State. In Ward against Texas, there was involved the same general pattern of long delays, travel back and forth between two or three different counties, all sorts of pressure, beatings, and finally a "voluntary confession."

The same is true in the case of Ashcraft against Tennessee, Harris against South Carolina, and Watts against Indiana.

Mr. President, to take away the right to review the voluntariness of those decisions would be to take a step backward and, in my judgment, would be contrary to our entire democratic system.

Mr. LAUSCHE. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. I shall not yield time for a question; the Senator may ask the question on someone else's time, and I will answer on my time.

Mr. McCLELLAN. I yield 1 minute to the Senator from Ohio.

Mr. LAUSCHE. For how many years following the adoption of the Constitution of the United States in 1787 were voluntary confessions, obtained without duress and intimidation, admissible in evidence? It is 180 years, practically, is that not the fact?

Mr. TYDINGS. Mr. President, that was the law, and is the law now, and was also when Brown against Mississippi was handed down, and Ashcraft against Tennessee, Ward against Texas, and Harris against South Carolina. But how do we enforce the rights of individuals if they cannot seek review from the highest Court in the land? That is what we will do under title II. We would remove the writ of habeas corpus to go to the highest court on fifth amendment problems, and we would remove the right of seeking certiorari or appeal as well.

Mr. LAUSCHE. We have the right to petition in error, always to show that a confession was obtained by duress or intimidation. But, the Senator has not yet answered my question: How many years was the law in existence where voluntary confessions were admissible.

Mr. TYDINGS. It was in existence——

Mr. LAUSCHE. Until 1966.

Mr. TYDINGS. It was in existence. It is still in existence. Mr. President, it was in existence at the time they beat the statement out of those poor men in Mississippi. It was the law at the time those confessions were beaten out of the defendants in Ward against Texas, Ashcroft against Tennessee, and all the other cases.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. McCLELLAN. Mr. President——

Mr. TYDINGS. All I am advocating is that the Supreme Court has a chance to rule.

Mr. McCLELLAN. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 3 minutes.

Mr. McCLELLAN. Mr. President, yes; it was the law of the land all during the time the Supreme Court reversed all the precedents. It was the law of the land that voluntary confessions were admissible into evidence if they were obtained without coercion or intimidation. That was the law of the land. Five members of the Supreme Court amended the Constitution. They amended it from what they had said themselves it was in 1958.

I want to make note of this: I have had an uphill fight here. I have been battling against the power structure. While the Senate has been deliberating on this matter, the Attorney General of the United States and his Department of Justice have been calling all over the

country asking college professors, and heads of law institutions to back them up and get in touch with their Senators directly and put pressure on them to defeat title II of the pending bill.

Mr. President, that is all right with me. I will stand on it. I will stand against the administration, the power structure, the five members of the Supreme Court, and against all the criminal element in this country who are lined up to see title II defeated. They will be the ones to rejoice.

Yes, Mr. President; I will stand here with those who want law and order and law enforcement, if I have to fight the Justice Department, the administration, and the five Justices who changed their minds according to the whim of the moment. I will still be fighting for it when this session of Congress adjourns and thereafter. Although I have had an uphill fight, I have been encouraged and sustained by the unshakable faith that I am right in the knowledge that five members of the Supreme Court are wrong and four members of it are right.

The five members of the Supreme Court had to flout and overrule precedent established in previous decisions by 28 of their illustrious predecessors, and four of their illustrious predecessors who made their own precedents, that the action in the ruling of the five members of the Supreme Court is tantamount to amending the Constitution.

Mr. President, the Constitution of the United States has not changed. The Supreme Court has changed and has tried to change the Constitution.

The PRESIDING OFFICER. The time of the Senator from Arkansas has expired.

Mr. McCLELLAN. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 2 additional minutes.

Mr. McCLELLAN. Mr. President, the procedure of amending the Constitution is a usurpation of the power reserved only to the people themselves. Criminals greatly benefit and society suffers immeasurably by reason of those Court rulings. Law enforcement officers are denied the use of the most elementary—Mr. President, this is the Court's language—and effective procedure in the performance of their duties, while the criminal is provided with an arbitrary and unreasonable shield of protection. Those decisions have freed and continue still to free untold numbers of murderers, rapists, robbers, arsonists, and other felons.

Mr. President, all the felons in these three famous cases were turned loose, and every one of them went out to violate the law again.

Mallory went out and raped another woman. Escobedo went out and was convicted on a heroin charge. Miranda was convicted of another serious crime and is now serving 30 years in the penitentiary.

Those are the kind of men we are turning loose. Do not tell me that it does not affect us all when today less than 5 percent of those who commit serious crimes are ever punished. No wonder the criminal feels he can go out and violate the law, because he knows that he can get away with it.

The American people want and need protection from law violators. They want equal justice under the law, equal justice for the accused as well as the innocent.

We are not getting that now.

The people want the scales of justice brought back into balance.

Mr. President, how much time remains?

The PRESIDING OFFICER. Each side has 17 minutes remaining.

Mr. McCLELLAN. I thank the Chair.

Let us fight—let us fight. Will not the Senator from Maryland use his 17 minutes, and I will use mine. Let us get going. It is the Senator's motion.

The PRESIDING OFFICER. Time is running.

Mr. TYDINGS. Let the Senator from Arkansas lead off.

Mr. McCLELLAN. Fine. I am glad to do so.

Mr. President, for the next 5 minutes I want to read a letter. I do not know the man who wrote it. He is from Ohio and he is a doctor. I have already placed it in the RECORD.

Listen to what he says:

DEAR SENATOR McCLELLAN: May I take the liberty of congratulating you on your recent statements in the Senate Judiciary Committee Reports on Crime (May 1, 1968).

He goes on:

After reading the article, "Runaway Crime—Will Congress Act?", in the *U.S. World and News Report*, May 20, 1968, might I please ask your courtesy to ponder the following with me—please.

The disease overpowering beautiful America, is Socialism and possibly eventual Communism.

The symptoms are: progressive and increasing lack of belief in God; moral corruption and decay; abandonment of individual responsibility; and a sickly attitude of wanting rights without fulfillment of prerequisite obligations and responsibilities.

The disease carriers are the criminals—multiplying at a fantastic rate—approximately ten times the rate of the general population.

Then he adds:

Let me enumerate more specifically:

1. In many of its recent decisions the United States Supreme Court has caused America and humanity irreparable damages.

2. Even swift congressional action to reverse same, will not ever undo the harm the Supreme Court has caused.

3. The Almighty God offers forgiveness for crime (or sin, as our religious leaders would prefer to call it).

Mr. President, there is a great deal more of it. I cannot read it all. He does say this:

Now, the Supreme Court in many of its most recent decisions has seemingly and perhaps in fact done the following:

1. Chosen to deliberately protect the criminal.

2. Ignored, transgressed—or caused to be transgressed—the God-given Rights of law abiding individuals (which it has a right, indeed, to protect.)

3. Undermined the vested powers of our law enforcing agencies such as the police force, courts, etc., etc.

4. Has made a mocking travesty of Moral Law, Justice, and Order.

5. Has contributed immensely to crime and the demoralization of this—the greatest Country God gave the world—ever.

6. Has helped to make a mockery of moral teachings by Parents to their children, by:

(a) breeding contempt by children for the parents.

(b) thereby ensuring immensely larger "crops" of future criminals.

7. Has fostered contempt for authority—thereby contempt for God.

Mr. President, when you read these decisions of the Supreme Court it is almost inescapable for you to come to any other conclusion but that the Court has become the enemy of all law enforcement officials in this country.

When the Court will not respect its predecessors, when it will change its mind to change the Constitution as it has been interpreted for 180 years, no wonder we have people going all over the land referring to the law, saying, "Well, I do not think it is right and I am not going to abide by it." No respect for authority. When the Supreme Court does not have respect for authority and does not respect precedents and overrules such illustrious judges as those whose names I have heretofore called, how can we respect the Court, and who feels compelled to respect the law?

Mr. President, the tone is set at the top. The Supreme Court has set a low tone in law enforcement, and we are reaping the whirlwind today. Look at that chart. Look at it and weep for your country. Crime spiraling upward and upward and upward. Apparently nobody is willing to put on the brakes. I say to my colleagues today that the Senate has the opportunity—and the hour of decision is fast approaching—to either do it or undertake to dodge it by voting for the Tydings-Hart amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield to the Senator from Ohio.

Mr. LAUSCHE. I asked the Senator from Maryland how long the law admitting voluntary confessions had been in effect. He said it had been in effect always, and is still in effect. My understanding is that the Supreme Court has positively changed that law. I now ask the Senator from Arkansas his opinion.

Mr. McCLELLAN. Everybody knows the Court has changed the law. The Supreme Court has done it, and has provided unreasonable technicalities which the Court never said were required under the Constitution. A police officer has to ask, before any question is asked, whether the suspect voluntarily agreed to answer, and whether he did so intelligently. That is the law. That is what the Supreme Court has held.

The PRESIDING OFFICER. (Mr. CLARK in the chair). Who yields time?

Mr. McCLELLAN. Mr. President, how much time is left?

The PRESIDING OFFICER. The Senator from Arkansas has 11 minutes remaining. The Senator from Maryland has 17 minutes remaining.

Who yields time?

Mr. ERVIN. Mr. President, I wonder if the Senator from Arkansas will yield me 1 minute to ask a question?

Mr. McCLELLAN. I yield 1 minute to the Senator from North Carolina.

If there are going to be any more unanimous-consent agreements, we are going to divide the time so every Senator will yield time in proportion.

Mr. ERVIN. As I understood the Senator, he said the Department of Justice was lobbying against title II.

Mr. McCLELLAN. There is no question about it. I have received calls from law colleges and law professors. They are calling at the instance of the Justice Department.

Mr. ERVIN. I will ask the Senator from Arkansas if the Justice Department does not have primary authority for enforcement of Federal laws.

Mr. McCLELLAN. Of course it has, but it is weaselly, and it does not want to come to grips with the issue.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. May I have 1 more minute?

Mr. McCLELLAN. I yield 1 minute. I am getting short of time.

Mr. ERVIN. I would just like to say that if the Department of Justice is lobbying against title II of the bill, the Department puts itself in the peculiar fix of demanding that it be given several hundreds of millions of dollars to be used to train police officers and then insisting that those police officers, after that training, will not be allowed to use any commonsense in enforcing the criminal laws of the States and the Nation.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY of Massachusetts. Mr. President, will the Senator from Maryland yield me 7 minutes?

Mr. TYDINGS. I yield 7 minutes to the Senator from Massachusetts.

Mr. KENNEDY of Massachusetts. Mr. President, each Member of Congress recites an oath upon taking office. He swears to support and defend the Constitution of the United States.

Today each of us has the chance to impart substance to that oath. In essence we are asked today to determine whether basic constitutional precepts which lie at the heart of our freedom and our democracy shall be preserved or dissolved.

We are asked to decide whether that yellowed document in the Archives, that treaty between ourselves and our forefathers, is to be adhered to or renounced. We are asked whether we have found some substitute for due process of the law, for the assistance of counsel, for the accusatory rather than inquisitory system of justice, for the great writ of habeas corpus, and, finally, for the Supreme Court as final arbiter of law and guarantor of justice.

For it is these keystones in our tradition of ordered liberty which are threatened here today. They are not threatened because they are obsolete, anachronistic, unworkable, unjustified, or unneeded. They are threatened because some Americans have panicked about crime and want scapegoats to flay and panaceas to grasp at.

They are threatened because other Americans want revenge against a constitution and a Court which denounced prejudice and discrimination in large segments of American life. They are threatened because this is a presidential year, and it is so easy to play politics with questions of law and order.

It is ironic that those who rail the loudest about obedience to law as an unshakable absolute, those who inveigh against civil disobedience in all its forms, should be in the forefront of an effort to violate the constitution, and rob the Supreme Court of its power. They are willing to promote title II despite the conclusions of hundreds of eminent law professors that title II violates the spirit and substance of the constitution.

They would have us pass a law that will invite and encourage disobedience to constitutional rulings of the Supreme Court. They ask us to alter by statute protections guaranteed by the Constitution and lawfully alterable only by constitutional amendment.

This indeed would be lawlessness—sophisticated and nonviolent lawlessness, to be sure, yet lawlessness nevertheless.

It would be a graphic illustration of a tenet held by few but criticized by many—that a person can ignore legal rules with which he disagrees. In short, it would represent in most blatant form the ideal of "do what I say, not what I do."

Yet there is even a greater potential for harm in the voting we are to perform today. We cannot survive as a society if our Government and its institutions do not have the support and understanding of the people. And we cannot expect people to support a government and a system which is not fair and just.

Especially in these times of stress and tension we must demonstrate that equality, regularity, and justice are goals and standards of our machinery of law enforcement and judicial scrutiny. We must win people to law and order not by fiat but on the merits of shared values and mutual interests.

Yet if the key to an equal stake in the law is equal treatment by the legal system, what will be the result of enacting a bill that suggests unfairness, promises unresponsiveness, and promotes the aspect of—not the substance of—inequality, injustice, and overreaching in the criminal justice system? If title II represents the best answer of the U.S. Government to the problems of crime and delinquency, then how can our Government maintain its credibility?

How can the poor feel they have a stake in a system which says that the rich may have due process, but the poor may not?

How can the uneducated have faith in a system which says that it will take advantage of them in every possible way?

How can people have hope when we tell them that they have no Federal recourse if they run afoul of the State justice system?

Mr. President, our task should be to instill more fairness and sensitivity in our law enforcement processes, not less.

Our aim should be to build the system to the point where it can be both fair and effective, firm but not feared, a force in every community which can be identified with the community's hopes and aspirations, its safety and security.

In short, our action on title II can determine whether, in many localities, the men in uniform are "them" or "us," allies or antagonists. A vote for title II will thus be a vote for confrontation and conflict, for loss of faith and of hope.

I cannot overstress the two concerns I have already expressed—the example of lawlessness that title II would set and the symbol of repression that it would constitute.

These are critical and determinative enough in themselves. Yet there is a much more immediate and pragmatic reason why title II must be deleted. Title II purports to be based on an assumption that the present standards of criminal procedure lead to the release of large numbers of guilty offenders, and that the passage of title II would stem this tide.

Exactly the opposite is true. Under such decisions as Miranda, only a few convictions, to which by accident of time, Miranda's partial retroactivity applied, had to be reversed, and in most of those, as in the Miranda case itself, the defendant landed back in court on other evidence or other crimes.

The important fact about the Miranda decision, however, is that it provided a clear, concise, and reasonable set of rules for every policeman to follow.

Thus, whereas before Miranda, a policeman could inject a critical flaw into a case out of ignorance or confusion or misunderstanding of what he was required to do, after Miranda every policeman in the Nation knew exactly what procedures to follow to fulfill his role in a responsible and constitutional manner. It is this consistency and reliability and simplicity that we would be casting away if we enacted title II. The result would be inconsistency in operations and attitudes all over the country. Every confession case would be contested and many would be reversed. Many guilty criminals would in fact go free.

The courts would be clogged with appeals and retrials.

We would set law enforcement back at least 5 years to the day when each policeman made his own rules and took his and the prosecutor's, and the defendant's and the public's chances in court.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. TYDINGS. I yield the Senator 2 additional minutes.

Mr. KENNEDY of Massachusetts. That was certainly no way to run a criminal justice system then, and, especially with some experience under Miranda behind us, it is a totally unacceptable way now.

Mr. President, it is the U.S. Senate which has traditionally been the repository of constitutionalism and fairness, of rights and liberties. In the 90th Congress we have certainly proved the viability of this tradition. We stood behind the court and the Constitution when they came under attack in the fight over congressional redistricting.

We extended the range of civil rights and civic responsibility when we passed the civil rights act of 1967. And now we are asked to take another stand:

Are we for or against the Constitution?

Are we for or against fairness and justice?

Will we or will we not abide by the Supreme Court's final interpretations of the law?

The answers to these questions should be self-evident, and I am sure we will meet our responsibilities in answering them.

Mr. President, I am prepared to yield back the remainder of my time, or I should be delighted to respond to the earlier questions of the Senator from North Carolina, if he wishes.

Mr. ERVIN. Mr. President, I have no time. I just wish to say that I seek to uphold the Constitution as it was written—before Miranda.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arkansas has 9 minutes, and the Senator from Maryland has 8.

Mr. McCLELLAN. Mr. President, I yield myself 4 minutes.

When I addressed the Senate last Friday, May 17, I said:

> The true issue, and there is no escaping it, is the spiraling rate of crime and the erroneous decisions of the Supreme Court versus the safety of our people and the security of our country.

Mr. President, as to the Constitution, I have just as much reverence for it as any Member of this body. What I deplore is Supreme Court Justices, who are sworn to it, as it has been upheld all down through the history of our Republic, themselves joining in opinions that say it means one thing, and then, when the next case comes along, turning a complete somersault in order to amend the Constitution.

Respect? Where? It is not with five members of the Supreme Court.

The pending Hart and Tydings substitute amendments for title II serve most forcibly to accentuate and sharpen the issue. They are simply diversionary tactics—a dodge, a stall—seeking to avoid a direct confrontation vote on the real issue. They are in fact "fiddling" amendments; they are "procrastinating" amendments; they would substitute "do nothing" for the positive action the bill proposes.

They ask the Senate to postpone action "indefinitely" while some kind of a proposed "indefinite" study is being made by some unknown and un-named congressional committee. Neither of these substitute amendments even require a report to the Congress from any committee of a study, if any study is ever made.

No report, Mr. President; a complete subterfuge.

Let us look at the reality of the moment. I ask Senators to look at the two charts which have been placed here in the Chamber—one depicting "crime clocks," and the other one showing the relative rise of crime and population, percentagewise, from 1944 through 1967.

These charts show that since the Miranda decision, crime has increased 137½ percent. Tell me it had no impact. Look at the Mallory case. Look at the Escobedo case. Look at the Miranda case. The graph is still turning in a spiral upward and upward, Mr. President.

It will be noted that the crime clock shows that there are six serious crimes committed each minute; a murder is committed ever 48 minutes; a forcible rape ever 21 minutes; aggravated assault every 2 minutes; one robbery every 3½ minutes; one burglary every 23 seconds; one larceny every 35 seconds; and one auto theft every 57 seconds.

Can we, Members of the U.S. Senate, in good conscience, do what we are asked to do by these substitute amendments—fiddle, procrastinate, and wait for an indefinite study with crime so rampant in our land as it is today?

I do not think so. Are we going to fiddle while crime destroys America, or are we going to stand up, like men, and vote to do something about it? We can excuse and alibi until doomsday, but all the time we are doing it, crime is increasing.

Will we in this hour of decision and opportunity fail to measure up while the crime rate is rising now at a rate of 15 to 20 percent each year—eight to 10 times faster than the increase in population?

Look at these charts and ask yourself, what will the crime rate be 1 year from now, 2 years from now, 3 years from now, or even 5 years from now when a report of the "extensive factual investigation" these amendments propose may be available to us—if, in fact, such a study and report are ever made.

Who wants this confessions provision in title II defeated? The answer is, primarily those who will benefit from it most. Who are they? If this confessions provision is defeated, the lawbreaker will be further encouraged and reassured that he can continue a life of crime and depredations profitably with impunity and without punishment. If it is defeated, the protection of society and the safety of good people—of the innocent throughout the land, your constituents and mine—will be placed in ever-increasing peril as the crime rate continues to spiral onward and upward to intolerable heights of danger.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. McCLELLAN. I yield myself 2 more minutes.

If this effort to deal with these erroneous Court decisions is defeated, every gangster and overlord of the underworld; every syndicate chief, racketeer, captain, lieutenant, sergeant, private, punk, and hoodlum in organized crime; every murderer, rapist, robber, burglar, arsonist, thief, and con-man will have cause to rejoice and celebrate.

Whereas, if it is defeated, the safety of decent people will be placed in greater jeopardy and every innocent, law-abiding, and God-fearing citizen in this land will have cause to weep and despair.

The PRESIDING OFFICER. Who yields time?

Mr. TYDINGS. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 7 minutes.

Mr. TYDINGS. Mr. President, I served for 3 years as the principal prosecutor of the District of Maryland. I personally have not agreed with all the decisions which have been handed down by the High Court. But I should like to set the record straight on a few points.

The Miranda decision basically says that when a defendant is arrested, the arresting officer should tell that individual that he has the right to remain silent, that anything he says can be held against him, that he has a right to consult a lawyer, and if he is too poor, the court will appoint one.

I challenge the statements of the Senator from Arkansas when he says that organized crime and the hoodlums it employs will benefit from these simple rules of procedure. Mr. President, that simply is not factual. There is no professional criminal today who, when he is arrested, does not automatically realize his rights and call up his attorney. No son of a rich man, no young man who has had the benefit of a college education, none of our children or our friends' children, need these protections generally.

They already know their rights and privileges. However, when we take away the rights and privileges of the weakest and the most defenseless and the most innocent, we are taking away the rights of the whole Nation.

The rules of procedure in Miranda have not, in my judgment and in the judgment of each comprehensive survey made of the facts afterwards—and not based on pure speculation and passion—these rules have not affected law enforcement in the rate of convictions, the rate of arrests, or the rate of clearance of criminal cases.

The basic requirements in Miranda have been followed for two decades by the Federal Bureau of Investigation, the Federal investigative agencies—which I dealt with as U.S. attorney—and by the military courts of justice in this country.

Whenever a prosecutor or an investigator reaches a point in a case where a suspect wishes to make a statement, the mere fact that the suspect is advised of his constitutional rights does not deter him from making a statement.

The reason for the rule against self-incrimination and the granting of the privilege against self-incrimination is to protect the innocent.

It was the innocent who made the statements that were beaten out of them in Brown against Mississippi. It was the innocent who were tortured and had the statements beaten out of them in Ward against Texas, Ashcraft against Tennessee, Harris against South Carolina, Watts against Indiana, Turner against Pennsylvania, Lyman against Illinois, and in all of the 22 cases that went to the Supreme Court of the United States in the past 30 years.

The proponents of title II say that the Miranda case went further. Those who attacked the decision of the Supreme Court in Brown against Mississippi said: "Why, the Supreme Court has never before reviewed the voluntariness of a confession which has been passed on by the highest court of a sovereign State."

Certainly they broke new ground. However, it was done to protect the rights of the innocent. It was to vindicate the

basic privilege against self-incrimination, which is the foundation of any democratic society.

Mr. President, these few rights that are involved are not needed by organized crime or by hoodlums. They have all of the lawyers they want on their payroll and all of the bondsmen they need. It is not needed by the rich, nor the powerful. However, those rights are needed to protect the innocent who do not know their rights, who are scared. Just as the cases I have indicated illustrate, if they are put under pressure for 26 or 28 hours and if they are beaten enough, they will give a confession in any manner the arresters want them to give it.

I have indicated that I do not defend all of the decisions of the Supreme Court. There are decisions in which, if I had been on the court, I would have been in dissent myself. However, our system is based on a delicate balance of power, and the Supreme Court is the top of our judicial system.

Mr. President, this is the way the drafters of our Constitution wanted it. This is the way our Republic has worked. Attacks on the Supreme Court, which is the basis of title II, are not unusual in the history of this country. One merely has to read of the attacks made on the John Marshall Supreme Court back in 1816, at the turn of the 19th century when Marshall handed down the decision in Marbury against Madison.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TYDINGS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Maryland has 1 minute remaining.

Mr. TYDINGS. Mr. President, how much time does the Senator from Arkansas have remaining?

The PRESIDING OFFICER. The Senator from Arkansas has 4 minutes remaining.

Mr. McCLELLAN. Mr. President, I yield back the remainder of my time.

Mr. TYDINGS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. TYDINGS. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. Pursuant to the unanimous-consent agreement entered into, at 2 o'clock the question will recur on the Tydings amendment as a substitute for the Hart amendment, and that question having recurred, there will be 30 minutes to a side, the time to be equally divided between the Senator from Arkansas and the Senator from Maryland.

The hour of 2 o'clock not having arrived, there seems to be a hiatus. Perhaps we can have a quorum call.

Mr. TYDINGS. Mr. President, I suggest the absence of a quorum.

Mr. McCLELLAN. Mr. President, I am going to suggest the absence of a quorum, and when we get a quorum, I propose to propound some parliamentary inquiries to attempt to clarify the parliamentary situation so that everyone will understand it.

The PRESIDING OFFICER. The Parliamentarian advises me that at that time the time will be under control.

Mr. McCLELLAN. Not for a parliamentary inquiry.

The PRESIDING OFFICER. The time will then be under control for the purpose of a parliamentary inquiry also.

Mr. McCLELLAN. There will never be another unanimous-consent agreement if a Senator cannot inquire about the parliamentary situation.

The PRESIDING OFFICER. A parliamentary inquiry may be propounded by unanimous consent without the time being charged against the amendment. At any rate, the absence of a quorum has been suggested, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McCLELLAN. What is the pending business? I did not understand that there was any time under control. We are to vote at 2 o'clock.

The PRESIDING OFFICER. A quorum call is in progress. A Senator has no right to propound questions to the Chair during a quorum call.

Mr. McCLELLAN. Well, the Senator is going to ask the questions.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll, and the following Senators answered to their names:

[No. 139 Leg.]

Aiken	Gore	Mundt
Allott	Griffin	Murphy
Anderson	Hansen	Muskie
Baker	Hart	Pastore
Bayh	Hartke	Pearson
Bennett	Hayden	Pell
Bible	Hickenlooper	Percy
Boggs	Hill	Prouty
Brewster	Holland	Proxmire
Brooke	Hollings	Randolph
Burdick	Hruska	Ribicoff
Byrd, Va.	Inouye	Russell
Byrd, W. Va.	Jackson	Scott
Cannon	Jordan, N.C.	Smathers
Carlson	Jordan, Idaho	Smith
Case	Kennedy, Mass.	Sparkman
Clark	Lausche	Spong
Cooper	Long, Mo.	Stennis
Cotton	Long, La.	Symington
Curtis	Magnuson	Talmadge
Dirksen	Mansfield	Thurmond
Dodd	McClellan	Tower
Dominick	McIntyre	Tydings
Eastland	Metcalf	Williams, N.J.
Ellender	Miller	Williams, Del.
Ervin	Mondale	Yarborough
Fannin	Morse	Young, N. Dak.
Fong	Morton	Young, Ohio
Fulbright	Moss	

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. McCARTHY], the Senator from Wyoming [Mr. McGEE], the Senator from South Dakota [Mr. McGOVERN], the Senator from Oklahoma [Mr. MONRONEY], the Senator from New Mexico [Mr. MONTOYA], and the Senator from Wisconsin [Mr. NELSON] are necessarily absent.

Mr. DIRKSEN. I announce that the Senator from Oregon [Mr. HATFIELD] and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

The PRESIDING OFFICER. A quorum is present.

The question recurs on the Tydings amendment as a substitute for the Hart amendment. Under the unanimous-consent agreement heretofore entered into, the Tydings amendment is subject to 30 minutes of debate on each side—30 minutes to be controlled by the Senator from Arkansas [Mr. McCLELLAN] and 30 minutes to be controlled by the Senator from Maryland [Mr. TYDINGS].

Who yields time?

Mr. TYDINGS. I yield 3 minutes to the Senator from Ohio [Mr. YOUNG].

Mr. YOUNG of Ohio. Mr. President, I support the amendment offered by the distinguished Senator from Maryland.

May I say at the outset that I served as chief criminal prosecuting attorney of Cuyahoga County, Ohio, in which the city of Cleveland is located, and I believe I know something about the law of this land. Before moving to Cleveland, where I was assistant prosecuting attorney and then chief criminal prosecuting attorney for 20 of the happiest years of my life, I lived in the little city of Norwalk, Ohio. It was then a city of some 7,000.

The PRESIDING OFFICER. Will the Senator suspend?

The Senate is not in order. Senators will kindly be seated and refrain from conversation, so that the Senator from Ohio may be heard.

Mr. YOUNG of Ohio. On my desk today, and I believe on the desk of each Senator, is a five-page letter written by a character in that little city—Dr. N. M. Camardese. I know him. May I tell my colleagues that for more than 20 years I lived in the city of Norwalk, the county seat of Huron County. My father was a common pleas judge of that county for many years. I love that little city. But it amazed me that today upon the desk of each Senator is a letter entitled "God—or the Supreme Court?" written by N. M. Camardese.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TYDINGS. I yield 3 additional minutes to the Senator from Ohio.

Mr. YOUNG of Ohio. I will make my comments brief and to the point. I know Dr. Camardese. It seems to me astonishing and an indication of weakness that anyone would rest his case in part on a 5-page letter from this man who is regarded as a nut. He is fortunate that the Probate Court of Huron County, Ohio, does not take him into custody. Any presentation made in this Chamber must be very weak indeed if it is considered that a letter written by this eccentric is considered to bolster it and add validity to it. He has no standing whatever in the community where I once lived, and I would not give any credence nor belief to his statements.

As a native of Norwalk, Ohio, I repudiate this statement of this so-called doctor, who is held in low esteem by the citizens of Norwalk, and I think his mentality, and certainly his commonsense and judgment, could be highly questioned.

Regarding this amendment, I support it in its entirety. Title II is an unconstitutional attack upon the Supreme Court, and I hope the majority of the Senate will manifest their good judgment and uphold the amendment offered by the distinguished junior Senator from Maryland [Mr. TYDINGS]. On May 13, I made

my major speech in the Senate, setting forth in detail my reasons for opposing title II and title III of the pending bill. At that time I stated that in my view, recent decisions of the U.S. Supreme Court protecting the rights of accused individuals are important safeguards and guarantees of individual liberty and should be maintained. Existing law is designed to assure that confessions are voluntary, that police lineups are fair, that arrangements are prompt and that defendants receive a full and fair hearing.

The proposals in title II are a serious threat to the Constitution of the United States. I could not in good conscience vote for this bill unless such proposals and provisions are eliminated altogether. They present a grave threat to the basic principles on which our Nation was founded—to our basic concept of separation of powers, to Federal supremacy, to judicial independence—in short, to our most cherished ideas of justice and the rule of law. A great blow would be struck against individual freedom and liberty were they to be enacted into law.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. YOUNG of Ohio. I yield.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McCLELLAN. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. McCLELLAN. I do not know the doctor.

Mr. YOUNG of Ohio. I know him well.

Mr. McCLELLAN. The Senator knows him?

Mr. YOUNG of Ohio. Yes, I know him.

Mr. McCLELLAN. Does the Senator know and understand the principles he espouses? Does the Senator repudiate them?

Mr. YOUNG of Ohio. Yes; I repudiate his statements.

Mr. McCLELLAN. Does the Senator repudiate the principles he espouses? Does the Senator repudiate them?

Mr. YOUNG of Ohio. Yes, I repudiate his statement.

Mr. McCLELLAN. Does the Senator repudiate his principles?

Mr. YOUNG of Ohio. I do not think Senators should give credence to the letter written by this man who is a nuisance, a pest, and nut. [Laughter].

The PRESIDING OFFICER. Who yields time?

Mr. TYDINGS. Mr. President, I yield myself 12 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 12 minutes.

Mr. TYDINGS. Mr. President, the issue before the Senate is whether or not we are going to take a step backward in those rights and individual liberties as interpreted by the Supreme Court of the United States which our Bill of Rights and our Constitution provide for every American, whether they are rich or poor, and whether they are weak or strong.

Title II, basically, is an attack on the Supreme Court. It is not a law-enforcement measure. There is no empirical data no factual survey, no study compiled in any comprehensive way which supports it as a law-enforcement measure. True, it has passionate espousals from many prosecutors and other persons, but no factual data, and no empirical evaluation.

The three studies made by the Pittsburgh Law School, the Yale Law School, and the Georgetown Law School on the results of the Miranda case all repudiate the argument that this is a law-enforcement measure. It is not a law-enforcement measure.

I take second place to no one in my espousal of law-enforcement efforts. As the distinguished Senator from Arkansas knows, I have been at his right hand in fighting on behalf of title I, title III, and title IV of the bill, and, for even stronger measures with respect to title IV, the gun control measures.

If I felt that title II was a law-enforcement measure or would help law enforcement in one iota, I would support it. However, the fact of the matter is that in all factual surveys made on the results of the Miranda case and the Mallory case not one has shown a reduction in rate of conviction or rate of clearance. There was only one instance where the number of confessions have been less. The facts show the conviction rate and clearance rate was constant and the clearance rate was greater.

I oppose title II for two reasons. First, it is an attack on our delicate constitutional system. Make no mistake about it, it is an attack on the Federal judiciary and the Supreme Court. It endangers the system of checks and balances we have in this country. Second, I oppose it because, in my judgment, it will cause massive confusion in all law-enforcement offices throughout the State. Many Senators, I think, do not realize what this title would do.

The first section, which relates to the Mallory decision and the Miranda decision, would restrict or attempt to restrict the Miranda decision insofar as it pertains to cases pending before the Federal courts. It does not, in effect, bind State court decisions.

Even if we adopt title II, theoretically, at least, State courts are still bound by Miranda, Mallory, and Wade. Yet, later on in the title, in section 3502 and in the latter part of section 3503, we restrict the reviewability of confessions and eyewitness evidence from the highest court of the State, so we would have 50 different jurisdictions, each passing its own rules and each passing its own law on what a voluntary confession is and what a voluntary confession is not, and what a framed lineup is and what a framed lineup is not.

I submit that even if title II should not be reviewed and held unconstitutional by the Supreme Court—and I feel it would be; and most constitutional scholars and constitutional lawyers feel it would be—what is now a simple and clear rule with respect to what a police officer does when he arrests a person; namely, to notify him he is under arrest, charged with a crime, that he does not have to make a statement, that if he makes a statement it may be used against him, that he has a right to a lawyer, and if he is too poor, he has the right to have a court-appointed lawyer—those clear and simple guidelines go out the window.

As a result, Mr. President, what is the ordinary police officer to use as a standard or guideline? Does he use the Miranda case? Does he use title II? What does he use? I submit that rather than assisting law enforcement, our local law enforcement will be in a great state of confusion. Even more unfortunately, this title holds out the false prospect to the people of the United States that it is a law-enforcement measure and that if it is passed the rate of crime will decrease in this country. Mr. President, that prospect is not based on any empirical study. If people feel that by agreeing to title II we are going to assist law enforcement and when the facts come home to roost, they find that it does not, they will be even more disappointed and more upset.

The Supreme Court has been under attack on more than one occasion in our history.

When John Marshall was the Chief Justice and handed down the decision in Martin against Hunter's lessee, the chief justice of the Virginia court, Justice Rone, wrote a vitriolic attack.

In response to another Supreme Court case, one State offered a bounty for the capture of any Federal marshal who attempted to cross its border to serve a court order. The Supreme Court has always been the center of storm.

The Supreme Court occupies one of the most delicate and most sensitive places in our system. Franklin Roosevelt and his Congresses in the 1930's attempted to pass new legislations and new concepts. The Supreme Court in the years 1933 through 1937 held unconstitutional a number of the key parts of the Roosevelt program.

Roosevelt then sponsored, together with the leadership of the Congress until Joe Robinson passed away, a bill to increase the size of the Supreme Court by four new men just so Roosevelt could uphold the law the way he wanted it and not the way the Supreme Court wanted it, at a time when Roosevelt had just received the greatest victory at the polls in the first half of the 20th century, in 1936.

Mr. AIKEN. Mr. President, will the Senator from Maryland yield for a question?

Mr. TYDINGS. I yield.

Mr. AIKEN. I should like to ask the Senator, if the Tydings amendment carries and title II is stricken from the bill, would it be in order, then, to offer any of the provisions of title II as an amendment to the bill?

Mr. TYDINGS. Yes. I am advised by the Parliamentarian that it would be.

Mr. AIKEN. I thank the Senator. I think that is very important to make clear.

Mr. TYDINGS. Mr. President, in 1937, my father, Walter George of Georgia, Harry Byrd of Virginia, and others, stood on the floor of the Senate and fought Mr. Roosevelt and his Supreme Court packing plan, on the very same principles I am standing in this Chamber at this moment fighting the attack on the

Supreme Court which is embodied in title II.

Mr. President, I do not agree with all the decisions the Supreme Court has made in this area. If I had been on the Court, I would have been in dissent on at least one of the decisions. But, I support the system. I support the power and authority of the Supreme Court to rule in their domain, just as I support Congress in theirs, and the President in his.

One of the sections of this bill seeks to withdraw the right of the writ of habeas corpus from the Federal courts and the Supreme Court of the United States in matters involving the fifth amendment and confessions.

Mr. President, do you know that the last time Congress did something like that was during the infamous era of Reconstruction days, when the House of Representatives had impeached Andrew Johnson and the Senate was trying his impeachment——

Mr. ERVIN. Mr. President, will the Senator from Maryland yield at that point for a question? I know that the Senator does not want to misstate——

The PRESIDING OFFICER. The Senator from Maryland refuses to yield.

Mr. TYDINGS. Mr. President, as part of Reconstruction legislation, Congress in 1867 passed a law giving the great right of the writ of habeas corpus jurisdiction to Federal courts, the purpose being to protect Federal marshals who they felt might be unlawfully taken into custody in certain States. At the same time, and ironically, the constitutionality of the reconstruction and military governments in the individual States, in time of peace, was brought before the Supreme Court legally, by petition, in a writ of habeas corpus, by one McCardle, an editor in the State of Mississippi who was opposing and challenging the Mississippi military government, put down there under Reconstruction acts by the radical Congress.

Congress, being controlled by the radicals at that time, was fearful that if the Supreme Court took jurisdiction of the McCardle case and heard his writ for habeas corpus, that they would overrule the entire military government.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. TYDINGS. Mr. President, I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 additional minutes.

Mr. TYDINGS. Mr. President, as I said, Congress, which was fearful that the Supreme Court would overrule the entire military government set up by Reconstruction Acts, passed legislation depriving the Supreme Court of jurisdiction of that case.

Now, Mr. President, I submit that that was a black day in the history of this country. When we deprive any individual of the right to the writ of habeas corpus, once given, and it has now been one century since it was given in 1867, if we deprive the right of the writ of habeas corpus to a citizen on the fifth amendment, then we can deprive him of the same on the first amendment.

The great writ of habeas corpus has been the protection of political leaders for 300 years. It was used to get John Wilkes out of the Tower of London 300 years ago. When William Penn was speaking on the streets of England, he was arrested and tried for breach of the peace for speaking to a group of Quakers. The jury refused to find him guilty, even though the judge directed the jury to find him guilty. All the jurors were thrown into jail but they were released on writ of habeas corpus.

Mr. COOPER. Mr. President, will the Senator from Maryland yield?

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Kentucky?

Mr. TYDINGS. I yield.

Mr. COOPER. The Senator is making a very interesting historical review of this subject but I should like to ask him: Am I correct in saying that the Senator's substitute would embrace all of title II?

Mr. TYDINGS. That is true.

Mr. COOPER. The substitute itself, however, goes only in its substance to the Miranda case. I have talked to the Senator about his amendment, and I have some trouble with it.

I may say that I oppose title II. If its sections are to be severed, there might be one section that I would support; but, as a whole, I oppose it, not only because the Supreme Court has passed upon constitutional issues, but also because I believe fundamentally that the reasons for protecting the rights of defendants are sound.

But the substance of the Senator's substitute is that it would postpone in order to have a statistical review of the effect of the Miranda decision upon law enforcement.

The Miranda opinion is based upon the constitutional right of a defendant not to incriminate himself under the fifth amendment.

My question follows: Assume that the study is held and the committee finds statistical evidence that Miranda has hindered law enforcement—and I think to a degree it will—I ask the Senator: What effect would it have, in the framing of new legislation, since the Miranda case was decided upon the constitutional rights of a defendant?

Mr. TYDINGS. In response to the Senator from Kentucky, let me say that it would not change the fundamental question which he brings up. However, I think to legislate in a vacuum is more dangerous than to legislate upon empirical data. All of the facts which have been compiled to date by the three studies made by Yale, Pittsburgh, and Georgetown, have all indicated that the Miranda case has not had any effect on law enforcement and that title II, therefore, cannot be argued as being a law enforcement measure, which it has been argued it is on the floor of the Senate, and many Senators will vote for it because they think it is a law enforcement measure, whereas in reality it is not. The purpose of my amendment would be to demonstrate conclusively that it is not, so that at such time as Senators have the opportunity finally to vote, they would have the facts on law enforcement as well as the constitutional point which is so vital and which the Senator from Kentucky makes.

Mr. COOPER. Although the Court employed statistics in the Miranda case in the question of police practices, the decision itself was based on the broad principles of the fifth amendment. If we were facing this as a substantive issue, that would be one thing, but your amendment troubles me, because I do not think it comes to grips with the real principle upon which the Miranda case is based. I should like to have the Senator's response. Is the reason for the Senator's substitute only delay?

Mr. TYDINGS. The reason for my substitute would be, for the moment, to defeat title II and to provide factual material or data for Congress to make a determination, so that it would not be legislative——

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Who yields time?

Mr. McCLELLAN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 10 minutes.

Mr. McCLELLAN. I yield 30 seconds to the distinguished Senator from New Hampshire [Mr. COTTON].

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 30 seconds.

Mr. COTTON. I thank the Senator from Arkansas.

Mr. President, I had intended to make some comment at this point but on February 23, 1967—over a year ago—in a report written to my constituents, after the Senate had received the President's message on crime, I made some comments appropriate to the question now before the Senate. I ask unanimous consent, in order to save time, to have those comments printed in the RECORD as a statement.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

The President has sent Congress his Message on Crime. Certainly it was needed.

Crime has jumped six times faster than the Nation's population. A home is robbed every 27 seconds, an assault takes place every 2½ minutes, a murder every hour. Only one-fourth of all our crimes are solved. Neither men nor women dare to venture forth alone on city streets at night.

What does the President propose to do about it?

He says state and local enforcement agencies must be strengthened—and he is right.

To strengthen them, he calls for an elaborate program of Federal grants to local enforcement agencies to provide better trained police officers, to improve courts and correctional systems, to combat organized crime and juvenile delinquency. Federal contributions could run into the billions for they range all the way from 60 to 100 percent of each new project.

Thus, in effect, the President wants to push law enforcement into the same area as health, education, and housing where Federal grants-in-aid have become accepted national policy. In those programs we have found that, though money helps, it's not the whole answer. In the field of law enforcement, this is doubly true. Here, initiative and a sense of responsibility by local authorities are even more vital. These qualities could be weakened

rather than strengthened by too great reliance upon Federal grants and Federal guidelines.

The police officer doesn't want a crutch—he wants a weapon. In the President's Message there was not a word, not a syllable, not a hint about what law enforcement officers almost universally regard as the heart of the crime problem—the need for laws to counteract Supreme Court decisions which have made it next to impossible to convict criminals. Most of the damage stems from the famous Mallory decision against "unnecessary delay" before bringing a suspect into Court. On this ground, Mallory's confession of rape was thrown out. He was freed and stayed free for 33 months—until he raped again. In his case, "unnecessary delay" meant 7½ hours. In 1962 the Courts said three hours was unreasonable, in 1964 thirty minutes, in 1965 five minutes. In that time, a guilty person could hardly tell the truth if he wanted to, and an innocent one could be subjected to the stigma of being arraigned in Court when a few simple questions might have totally exonerated him.

The impact of the Mallory decision has been devastating. In the five years preceding it, crime in Washington had been reduced 37 percent. In the nine years following it, crime more than doubled. Holdups, purse-snatchings, and assaults skyrocketed 305 percent. Speaking of the murder of eight Chicago nurses, Truman Capote, student of criminology and author of a book on multiple murder said, "It seems almost unbelievable that the police force of one of our major cities is literally frightened to death to ask the prime suspect a single question for fear their case against him might be jeopardized." Interestingly, Capote, a political liberal, adds, "While many in our society are wailing about the rights of the criminal suspect, they seem to totally ignore the rights of the victims."

No wonder police officers hesitate and law enforcement lags. A 21-year-old policeman may have to make a snap decision in a situation that the Supreme Court may take weeks to study and then decide, 5–4, that the officer did the wrong thing.

Many of us in the Senate are pushing for a law that will loosen the shackles on enforcement officers and still preserve the rights of the suspect. Senator McClellan, Chairman of the Committee on Criminal Laws and Procedures, has a well-reasoned and careful bill for this purpose. We believe that as long as these Court decisions stand, a million Federal handouts will never control crime. We feel that by refusing to meet this issue, the President is declaring only a "limited" war on crime. We agree with Mr. Justice Jackson who, at a time when the Supreme Court had only started on its binge to make good guys out of the criminals and bad guys out of the police, said:

"Unless the Court starts to temper its doctrine with logic and a little bit of common sense, you are going to turn the Bill of Rights into a suicide pact."

Mr. MAGNUSON. Mr. President, will the Senator yield to me?

Mr. McCLELLAN. I yield to the Senator from Washington.

Mr. MAGNUSON. Mr. President, referring to the pending amendment, I feel, as do most Americans, that we should take great care to maintain the integrity of the Constitution. Frankly, as a former prosecuting attorney, I share the reservations of many about the recent Supreme Court decisions concerning various criminal cases.

Fortunately, the drafters of our Constitution provided a technique by which a majority of the United States could override Supreme Court interpretation of the Constitution. Those are the procedures which should be utilized if we are interested in reversing Supreme Court interpretation of the Constitution. When the Constitution was established, one of the major concerns was to have a superior judicial body which would be truly independent. It was for this reason that appointments to the Supreme Court were specified as lifetime appointments. To attempt legislatively to reverse actions by the Supreme Court is to contravene an essential element of our constitutional form of checks and balances.

I oppose legislative efforts to make the changes, even while I might agree with some of the changes which are contemplated by various legislative proposals. The proper way to make these changes is through a constitutional amendment. Only in that way can we preserve the integrity of our constitutional form of government. The legislature should not take action which will place it in a head-to-head confrontation with another branch of the Federal Government, and it is the duty of those of us who are Members of the legislative branch to interpret the Constitution and to act in accordance with it so that we do not pass any law which we must know is unconstitutional.

Mr. McCLELLAN. Mr. President, the distinguished Senator from Ohio called one of his constituents a "nut" because of the letter he had written. I do not know whether he is a "nut" or not, but if he is, he is a very intelligent "nut." Read the letter. I do not know whether he is a "nut" or not, but he stands for some very basic principles. Read the RECORD and see whether you agree with his sentiments or not.

Mr. President, I have placed a copy of another letter on the desk of each Senator. Many of us know Ray Jenkins, the great trial lawyer who represented this body in the Army-McCarthy hearings, a distinguished lawyer who tried 700 murder cases in his career. This letter was written to me voluntarily. I did not solicit it. Listen to what he says. I am not going to read all of it:

With more interest than I can possibly tell you I have read of your proposed legislation to counteract some of the decisions of the Supreme Court and which in my opinion as a criminal lawyer have resulted and will result in a traumatic effect on the administration of justice. As a criminal lawyer I would be expected to agree with some of the court's decisions because they have afforded so many loopholes for the escape of the hardened criminal from the punishment he deserves. The reverse of this is true. As I look back over an experience of 47 years in trying cases in many Courts (now around 700 murder cases) I can think of so many cases that could have been thrown out of Court by the application of the present day rules of the Supreme Court and yet in all those cases I can't think of a single one in which there was a miscarriage of justice.

This is not someone prejudiced who is talking. This is a criminal lawyer who is making a living in this profession.

He continues:

The rigid rules now in effect and especially those pertaining to the questioning of suspects, their confessions and the publicity given such cases by the news media have made it impossible to secure convictions in many cases of obvious guilt, with the result that society stands aghast, confused and bewildered and suspicious of the integrity of the Courts, and the hardened criminals glory in the Champions of their cause, that is the Supreme Court of the United States.

And, Senators, that is not someone who is prejudiced, pleading before you today.

I am going to show Senators that in the city of Baltimore, where the distinguished Senator from Maryland practiced, his own prosecuting attorney repudiates the statement of the Senator from Maryland.

Mr. Jenkins closes his letter by saying:

God save the United States from the Supreme Court of the United States.

I glory in the stand you are taking.

Is Miranda not having any effect? Let us see what it was doing in Maryland as of last year.

I ask Senators why this diversionary tactic was not submitted to the subcommittee. Why was it not submitted to the full committee? We never heard of it. But it is submitted here as a diversionary tactic to avoid our facing the issue. That is why it is here.

Listen to what the district attorney for the city of Baltimore said. This is the statement of Charles E. Moylan, Jr., States attorney for the city of Baltimore, Md. I cannot read all of this statement, but it is in the hearings at page 619. Read his whole statement, if you will. He said, talking about the Escobedo and Miranda cases:

The effect I see, the detrimental effect—and I might say, Senators, I believe sincerely it is a devastating effect—on local law enforcement of *Miranda* v. *Arizona*. I can speak only of my own jurisdiction. I know that several months ago I had my own staff of 33 survey the important felony cases that they had lost in the courts of Baltimore City, the criminal courts of Baltimore City, where we had a confession that clearly, under the old voluntariness standard, could have been admitted and would probably have led to conviction, but where, not being able to offer that confession into evidence, the case was lost, and the man, who we feel was guilty, walked free.

That has happened in every jurisdiction in the United States.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. McCLELLAN. In a moment.

Let me continue:

We found, in a very conservative estimate, 72 cases out of a survey of roughly 500. It is a limited number that we can survey, because we are simply speculating when we talk about the effect of *Miranda*, since the only time when we really had the police taking the confession, and suddenly we could not use it in court, was in the transition period, where the case, the interrogation started shortly before *Miranda* and the case came up for trial after *Miranda*, in June of 1966.

Mr. President, I ask unanimous consent that excerpts from the voluminous testimony about the detrimental effects of Miranda be printed in the RECORD at this point.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

S. 674—CONFESSIONS BILL

SUMMARY OF TESTIMONY FROM HEARINGS OF MARCH 7, 8, AND 9, 1967, HON. JOHN STENNIS, U.S. SENATOR FROM THE STATE OF MISSISSIPPI (PP. 110–117)

Recent Supreme Court decisions dealing with police interrogation and investigative procedures have demoralized policemen, in addition to making them less effective in combatting crime. I think that the method of allowing the trial judge to determine the voluntariness of a confession before submitting the same question to the jury for their determination prior to admission of the confession in evidence is the proper procedure to follow.

The approach taken in S. 674 is fair and reasonable. The admissibility of a confession should depend on its voluntariness. The judge and jury are in the best position to determine the truthfulness of the testimony regarding the confession. The prosecution must establish to both the judge and the jury that the confession was voluntary. A change from the approach of the *Miranda* case is essential and significant in our fight against crime. The *Miranda* rule goes to the very heart of the entire investigative process and the case is having its effect right now. If *Miranda* is not challenged, its harmful impact will gain momentum due to the historical nature of our court system. Many of the lower courts will expand on *Miranda*, resulting in many new and extended interpretations of the case.

SUMMARY OF TESTIMONY FROM HEARINGS OF MARCH 7, 8, AND 9, 1967, HON. ALAN BIBLE, U.S. SENATOR FROM NEVADA (PP. 126–138)

The decision in *Mallory* v. *United States*, 354 U.S. 449, was one of several factors influencing the increased crime rate in Washington, D.C. Studies and statistics in the District of Columbia indicate that serious crimes in the District have increased 72% in 16 years. Since 1950, police clearance rates for the proportion of cases solved in the serious crime area declined from 48½% to 26.3%. Despite the tremendous increase in crime in the District, the number of felony convictions have decreased markedly. The 72% increase in crime was accompanied by a 39% decrease in felony convictions. The decline in felony convictions has been accompanied by an increase in the number of guilty pleas to lesser offenses. From 1950 to 1960, these "compromise" pleas increased from 21% of the defendants to 38% of the defendants. It is my view that the *Mallory* decision contributed to these disturbing statistics. The new obsessions with uncovering new rights and safeguards for the criminal have unbalanced the scales of justice to such an extent that we are losing control of the crime and violence running rampant in our cities. Experience has taught that court decisions are too inexact to deal with post-arrest problems. Legislation, such as 674, is one way to remove that uncertainty. I suggest that a time limit be set in 674 within which a suspect must be taken before a magistrate.

ARLEN SPECTER, DISTRICT ATTORNEY, PHILADELPHIA, PA. (PP. 199–219)

Prior to Escobedo, 90% of suspects would make a statement. These statements were often not incriminating on their face, but they were valuable in investigating the crime. After Escobedo, only 80% would give statements. Then came the Second Circuit case known as the Russo Case, coming out of Penn., after which only 68% of suspects would give statements. Then came the Miranda case in June of 1966. Since Miranda, out of 5220 suspects arrested for serious crimes, 3095 refused to give a statement. This is a percentage of only 41% who would give statements, a decrease of 49% since Escobedo. These statistics are inclined to become more alarming as more criminals become more familiar with Miranda. Another serious problem is in the area of arrests made before the effective date of Miranda but not taken to trial before that date. At the time the investigations and the interrogations were made in these cases, the procedures outlawed in Miranda were considered valid and were widely used. In most of these cases, we are forced to agree to an acquittal of the case, rather than put the defendant in jeopardy and bar a future prosecution if other evidence is found. This necessitated the release of criminals that we are sure committed heinous crimes. They walk the streets today. Criminals, especially the hardened criminals, are aware of the Miranda rule to a great extent. S. 674, and the accompanying hearings make it possible to examine all the facets of human experience that must be taken into account in solving the problem of confessions. The courts, in considering only the limited facts and issues in each case do not have the opportunity to evaluate these factors. S. 674, which, on its face, applies only to Federal proceedings, could possibly be made applicable to the States by Section 5 of the 14th Amendment, which provides that Congress shall have the power to enforce by appropriate legislation the provisions of the 14th Amendment. As Miranda is applicable to the States only through the dictates of the 14th Amendments, then the States might be given the relief of S. 674 by Section 5 of that amendment. The aspect of the Miranda decision that is most detrimental to law enforcement is the requirement that a suspect be told of his immediate right to a lawyer provided by the State as this will result in no statement from the suspect. It will be almost impossible to prove waiver under the Miranda standard.

Once this bill is passed with all its legislative history—the record from the committee hearings with all the underlying social policies taken into account by Congress—we will have a better record to take before the Supreme Court. This might change the mind of one of the judges. The picture presented the Supreme Court dealing with interrogation techniques of the police—the police text books referred to throughout the opinion in Miranda and the Mutt and Jeff examples—is not a correct portrayal of what actually goes on in police stations across the country. This committee could investigate the area and find that police practices are acceptable to most people. In the face of that, the Court is not apt to cite a couple of police textbooks for the proposition that all police interrogation is bad. One the whole, the practices cited by the Court are not followed by law enforcement personnel.

Percentage of defendants confessing is down after Miranda

During the Subcommittee hearings, Arlen Specter, District Attorney of the City of Philadelphia, revealed a study on the effects of *Miranda* conducted by his office. The results indicated that prior to the *Escobedo* case, 90% of the suspects would make a statement, often not incriminating on their face, but valuable in investigating the crime. After *Escobedo*, only 80% would give statements. After the Second Circuit *Russo* case, only 68% of suspects would give statements. Then came the *Miranda* case in June of 1966. Since *Miranda*, out of 5220 suspects arrested for serious crimes, 3095 refused to give a statement. This is a percentage of only 41% who would give statements, a decrease of 49% since *Escobedo*. These statistics are inclined to become more alarming as more criminals become more familiar with *Miranda*.

SUMMARY OF TESTIMONY FROM HEARINGS OF MARCH 7, 8, AND 9, 1967, HON. AARON E. KOOTA, DISTRICT ATTORNEY, KINGS COUNTY, NEW YORK (PP. 219–243)

In Brooklyn, prior to *Miranda*, approximately 10% of the suspects involved in serious crimes refused to make statements or confessions to police. After *Miranda*, 41% refused to make statements or confessions. We have had to dismiss many cases where the arrest was made before *Miranda* but the defendant was not brought to trial before the decision became effective. Specifically, between June and September of 1966, 130 out of 316 suspects refused to make any statement. In only 30 of these 130 cases did we have sufficient evidence to prosecute apart from the confession.

Another serious question was raised by the *Miranda* decision, but no solution is evident to me. We have been bombarded with questions regarding when a suspect is "in custody" within the *Miranda* rule. S. 674 should first submit the question of voluntariness to the judge and then to the jury. The jury should be allowed to decide more than the weight or sufficiency of the confession to answer the dictates of *Jackson* v. *Denno*. Confessions are helpful in seeking convictions.

Fewer confessions since Miranda

Aaron Koota, District Attorney for Kings County, New York, conducted a similar survey, indicating that prior to *Miranda*, approximately 10% of the suspects involved in serious crimes refused to make statements or confessions to police. After *Miranda*, 41% refused to make statements or confessions. Specifically, between June and September of 1966, Mr. Koota revealed that 130 of 316 suspects refused to make any statements at all. In only 30 of these 130 cases did Mr. Koota have sufficient evidence to prosecute apart from the confession. Mr. Koota was unequivocal in stating that confessions are helpful in securing convictions.

Charles E. Moylan, Jr., State's Attorney for the City of Baltimore, Maryland, reports more disturbing statistics. Mr. Moylan said, ". . . (We) used to get . . . (confessions) in 20 to 25% of our cases, and now we are getting . . . (them) in 2% of our cases. The confession as a law-enforcement instrument has been virtually eliminated." Mr. Moylan noted that the *Miranda* case has encouraged the criminal element, discouraged the police, and disappointed the public that depends on the courts for protection.

Frank S. Hogan, New York County District Attorney, reported similar findings. In the six months prior to the *Miranda* case, 49% of the non-homicide felony defendants in New York County made incriminating statements. In the six months after this decision, 15% of the defendants gave incriminating statements.

SUMMARY OF TESTIMONY FROM HEARINGS OF MARCH 9, 1967, HONORABLE ALEXANDER HOLTZOFF, U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA (PP. 259–268)

The decision in *Mallory* v. *U.S.* is one of the contributing causes to the difficulty in enforcing the criminal law and the increasing rate of crime. Experienced criminals enter fewer pleas of guilty, which results in a greater caseload for the courts. The quick and efficient enforcement of the criminal law is a deterrent to crime that is being weakened by the tangential issues so prevalent in modern criminal cases. The question is often not the guilt or innocence of the defendant but the conduct of the police and prosecutors. *Miranda* and *Escobedo* discourage voluntary confessions, which is often the most reliable evidence of guilt. The privilege against self-incrimination applies only to testimony compelled in a judicial proceeding. *Miranda* will probably reduce the use of voluntary con-

fessions to a very small percentage. Most lawyers will advise the defendant to say nothing.

He believes S. 674 is constitutional.

SUMMARY OF TESTIMONY FROM HEARINGS OF MARCH 9, 1967, HONORABLE HOMER L. KRIEDER, PRESIDENT JUDGE, COURT OF COMMON PLEAS, HARRISBURG, PENNSYLVANIA (PP. 268–299)

The approach to the confessions problem taken in 674 is fair and reasonable. Using the totality of the circumstances as the criteria for determining admissibility of confessions is the time-honored rule. The news is full of reports of confessed criminals released because of the decisions emphasizing the rights of the defendant. The vast majority of the prosecutors are of the opinion that the *Miranda* case has hampered law enforcement. There are those who disagree, but these are a very small majority. Under the present law, the state has no appeal from a decision of a judge excluding a confession under the *Miranda* rule. A provision granting an appeal from this ruling would not be unconstitutional as it is not a final judgment. Preliminary judgments do not place a defendant in jeopardy.

I disagree with the statements of former Attorney General Katzenbach to the effect that the Miranda decision does not contribute to the increase in crime. Criminal trials now degenerate into a maze of technicalities that overlook the basic question of guilt. Judges are forced to ignore the most credible evidence of guilt, a voluntary confession.

SUMMARY OF TESTIMONY FROM HEARINGS OF MARCH 9, 1967, QUINN TAMM, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (PP. 326–353)

The *Miranda* case will materially reduce the number of confessions obtained from defendants. Along with this will be reduced pleas of guilty. While the FBI advises the defendant of his constitutional rights, they do not tell them that a lawyer will be furnished them. While there are isolated instances of police brutality, the police interrogation practices condemned in *Miranda* are not practiced today. They might have been recommended practices 30 years ago, but they have no place in modern police techniques. It might be the Supreme Court that is overreacting, rather than some of its critics. A law enforcement officer that violates a criminal's rights should be administratively punished, but the confessed criminal should not be released back on society.

HON. FRANK S. HOGAN, NEW YORK COUNTY DISTRICT ATTORNEY (PP. 1120–1126)

In the 6 months prior to the *Miranda* case, 49% of the nonhomicide felony defendants in New York County made incriminating statements. In the 6 months after *Miranda*, 15% of the defendants gave incriminating statements. This is harmful to efforts to convict the criminals who roam our streets and assault our citizens.

CHIEF OF POLICE MORTON OF FRESNO, CALIFORNIA

Bad effect of Miranda

The number of convictions and guilty pleas have declined drastically since the pre-Escobedo days of 1963. This is in spite of the fact that felony arrests have increased 75% since 1963. The following table is included for reference.

CITY OF FRESNO, CALIF.

Year	Felony arrests	Convictions or pleas	Percent
1963	1,475	546	37
1964	1,635	539	32
1965	1,539	379	24
1966 (+72 percent)	2,042	461	22

Figures such as those shown make a travesty of the efforts of dedicated law enforcement officers. In previous years and through 1963, there had been a gradual increase in the number of felony arrests and the percentage of those arrests which terminated in a conviction or plea of guilty. This trend, which I attributed to better police methods, was drastically reversed after Escobedo and the California decision in Dorado.

MR. JUSTICE WHITE—DISSENTING IN MIRANDA

Need for use of confession

Until today, "the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence." *Brown* v. *Walker*, 161 U.S. 591; see also *Hopt* v. *Utah*, 110 U.S. 574, 584–585. Particularly when corroborated, as where the police have confirmed the accused's disclosure of the hiding place of implements or fruits of the crime, such confessions have the highest reliability and significantly contribute to the certitude with which we may believe the accused is guilty. . . there is, in my view, every reason to believe that a good many criminal defendants, who otherwise would have been convicted on what this Court has previously thought to be the most satisfactory kind of evidence, will now, under this new version of the Fifth Amendment, either not be tried at all or acquitted if the State's evidence, minus the confession, is put to the test of litigation. I have no desire whatsoever to share the responsibility for any such impact on the present criminal process. In some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity.

JUSTICE HARLAN, DISSENTING IN MIRANDA

Harmful effect of Miranda

There can be little doubt that the Court's new code would markedly decrease the number of convictions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of interrogation. How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy. . . We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, and that the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation.

Mr. McCLELLAN. Mr. President, I say to my colleagues, you can delay. You can postpone matters. You can be a party to spiraling crime if you want to. Or you can join me today and act as the representatives of the law-abiding, God-fearing people of this country, and put a stop to turning criminals loose on dubious technicalities that have nothing to do with guilt or innocence.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. TYDINGS. Mr. President, I yield myself some of my time.

For the purpose of clarification, with respect to the testimony of Mr. Moylan which was read, that testimony referred to cases in the transition period, cases in the pipeline, already pending at the time Miranda was decided, in which the arrests had been made and warnings had not been given in accordance with the Miranda statement. But what the Senator proposes to do by title II would be to repeat the problem all over again, because if title II is carried, the law-enforcement officials, in great confusion, may feel they are not required to follow the rule of the Miranda case, and if, 2 or 3 years later, the case goes to the Supreme Court and a decision is handed down affirming the Miranda ruling, then any cases in the pipeline which had not followed the constitutional procedure of Miranda would be thrown out, and the convictions would be reversed. That is one reason why I oppose title II. It deters and hinders law enforcement.

Mr. McCLELLAN. I thank the Senator for admitting that the principle of this proposal is right; that the only reason why he opposes it is that it might cause confusion to arise. Mr. President, the confusion is already there. It was caused by the Supreme Court's refusal to follow precedents and by overturning decisions made by some of the most brilliant Judges who served on that bench. It will continue until the legislative body moves in to try to rectify the mistakes the Court has made and addresses its attention to the fact that the decisions are causing devastation in this land with respect to law enforcement

I have hope—I may be wrong—but I have hope that if this body will act and stand up on this issue, we will attract the attention of the Court, not to intimidate, not to coerce, but to let them know that this body, this coequal branch of the Government, of equal dignity and of equal power, does not agree; and that while we do not like to see the jurisdiction of the Court limited, if we cannot do anything else, the day will come when we will have to do it, in order to have law enforcement in this land.

The ACTING PRESIDENT pro tempore (Mr. METCALF in the chair). The Senator's time has expired.

Mr. McCLELLAN. How much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 19 minutes.

Mr. McCLELLAN. Very well; I shall proceed for another minute.

Let me ask the Senate some questions. Who really wants this confessions provision defeated? This, Mr. President, is a diversionary tactic. This proposal does not even require a report back to this body. It is indefinite. Nothing is required; just a former mayor's suggestion that committees of Congress investigate. No report is required. The investigation can go on indefinitely.

What we would be voting for is to procrastinate. I ask my fellow Senators, can we, the Members of the U.S. Senate, in good conscience do what we are asked to do by these substitute amendments? Can we fiddle, procrastinate, and wait for an indefinite study, with crime as rampant and spiraling as it is in our land? Can we do that?

Look at those charts. Then I ask, who wants to have the confession provision in this title defeated? I know good men and honest men can disagree, but I say to the Senate, and no man here will dispute this, that the answer is, if this confessions provision is defeated, the lawbreaker will be the beneficiary, and he will be further encouraged and reassured that he can continue a life of crime and depredations profitably with impunity and without punishment. If it is defeated, the protection of society and the safety of good people—of the innocent throughout the land, your constituents and mine—will be placed in ever-increasing peril as the crime rate continues to spiral onward and upward to intolerable heights of danger.

Yes, Mr. President, if this effort to deal with these erroneous Court decisions is defeated, every gangster and overlord of the underworld; every syndicate chief, racketeer, captain, lieutenant, sergeant, private, punk, and hoodlum in organized crime; every murderer, rapist, robber, burglar, arsonist, thief, and conman will have cause to rejoice and celebrate.

Whereas, if it is defeated, the safety of decent people will be placed in greater jeopardy and every innocent, law-abiding, and God-fearing citizen in this land will have cause to weep and despair.

You tell me it is not a law-enforcement measure? Our Government operated under it, and the courts operated under it, from the time of the founding of this Republic to the Miranda decision. It was a law-enforcement measure then. It was used then, fairly and justly. It can be used again. It ought not to be tampered with by the Court.

Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator has 15 minutes remaining.

Mr. McCLELLAN. I yield 5 minutes to the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, the Senator from Maryland does not seem to understand one of the provisions in title II. It does not deprive a man of the right to obtain a review of his Federal claim; it merely undertakes to do what the Chief Justices of the States have implored Congress to do, and that is to pass legislation which will provide an orderly procedure. The chief justices of the States say that orderly Federal procedure, under our dual system of government, should require that the judgment of a State's highest court be subject to review or reversal only by the Supreme Court of the United States.

That is what this provision would do. It says an accused can get all of his Federal rights from the Supreme Court, if it is willing to give them to him in case such rights have been denied him by the State trial court and the highest appellate court of the State having jurisdiction of his case. Here is what the district attorney of Baltimore County, Charles E. Moylan, Jr., said before the Subcommittee on Criminal Laws and Procedures. He said that—

> Before Miranda we used to get it (a confession) in 20 to 25 percent of our cases, and now we are getting it in (only) 2 percent of our cases.

Many criminals commit crimes virtually in secret and can only be convicted by confessions. Here is what the district attorney of Baltimore adds:

> The confession as a law enforcement instrument has been virtually eliminated.

That is what the district attorney of Baltimore said about Miranda. And his statement to this effect indicates that the objective ascribed to the majority of the Court by Justice White in his dissenting opinions in the Escobedo and Miranda cases, that is, to put an end to the making of confessions regardless of whether they are voluntarily made or not, is in process of being realized.

Mr. President, I would say to Senators, "If you believe that the people of the United States should be ruled by a judicial oligarchy composed of five Supreme Court Justices rather than by the Constitution of the United States, you ought to vote against title II. If you believe that self-confessed murderers, rapists, robbers, arsonists, burglars, and thieves ought to go unpunished, you ought to vote against title II. If you believe that eyewitnesses to crimes should not be permitted to look at suspects in custody for the purpose of determining whether they are the men they saw commit the crimes charged or not, then you ought to vote against title II. But if you believe, as the Senator from North Carolina believes, that enough has been done for those who murder and rape and rob, and that something ought to be done for those who do not wish to be murdered or raped or robbed, then you should vote for title II."

The only body on earth which, in and of itself, can do anything for those who do not wish to be murdered, raped, or robbed is the Congress of the United States; and it can do it by passing title II, which is constitutional unless the Constitution itself is unconstitutional, because section 2 of article III declares in plain words that Congress can regulate the appellate jurisdiction of the Supreme Court.

Mr. COOPER. Mr. President, will the Senator yield for a question?

The ACTING PRESIDENT pro tempore. Does the Senator from North Carolina yield?

Mr. ERVIN. If I have time.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina has 2 minutes remaining.

Mr. TYDINGS. I yield to the Senator from Kentucky 1 minute.

Mr. COOPER. The Senator is a great constitutional lawyer. I ask him, does he think that section 3501 of title II can overrule the holding of the Supreme Court in Miranda, when it is founded upon the Constitution, on sections of the fifth amendment and the 14th amendment?

Mr. ERVIN. If we have the authority to implement the Constitution, we have authority to prescribe rules of evidence for the Federal courts; and this proposal would restore the law as it was from June 15, 1790, until five Judges of the Supreme Court added to the Constitution things which were not in it, and subtracted from the Constitution things which are in it.

Mr. COOPER. I do not think that is an answer to my question. May I say also that some of us who expect to vote against title II do not consider we will be voting against it in the context in which the Senator from North Carolina and the Senator from Arkansas place those who vote thus.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Who yields time?

Mr. TYDINGS. Mr. President, I yield 2 minutes to the Senator from Oregon.

The ACTING PRESIDENT pro tempore. The Senator from Oregon is recognized for 2 minutes.

Mr. MORSE. Mr. President, on May 2, I made my major speech in the Senate in opposition to title II of the bill and set forth my reasons as to why I think much of it is unconstitutional.

I want only to make a brief comment today.

As I have followed the debate, I think that the great Chief Justice John Marshall must be revolving in his grave because, when all is said and done, this is an attack on the great case of Marbury against Madison when the great Justice established that the determination of the constitutional rights of the American people vest in the Supreme Court and nowhere else.

I understand that some of our colleagues do not like the fact that the decision of the chief justice of some State court or the decision of some local Federal courts have been found to be wanting under the doctrine of Marbury against Madison by the U.S. Supreme Court.

I think we will do great damage to our system of government, its separation-of-powers doctrine, and its three coordinate and coequal branches of Government if we do not stop playing Supreme Court Justices on the floor of the Senate.

If we believe we need to amend the Constitution because it is thought that the Supreme Court has been adding to the Constitution things that are not in it, I point out that the Constitution provides specifically for amending the Constitution. But for us to argue that we know better than the Supreme Court as to what should be done in regard to habeas corpus and in regard to protecting the rights of American people with regard to confessions and with regard to investigative arrests—because that is really what was specifically involved in the Mallory case—when all is said and done, is to do violence to our very system of government itself.

We all recognize under Marbury against Madison that the determination of many of these issues rest in that citadel which is just a stone's throw away. That is where we ought to let it remain, and we should vote to strike title II from the bill.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas is recognized.

Mr. McCLELLAN. Mr. President, I yield 1 minute to the Senator from Ohio.

Mr. LAUSCHE. Mr. President, the Senator from Arkansas in his prior statement mentioned illustrious Justices who have ruled in conformity with the argument made on the floor by the Senator from Arkansas. Will the Senator from Arkansas identify those judges?

Mr. McCLELLAN. Mr. President, I will be glad to do so.

Thirty-two Judges of the Supreme Court have passed upon the identical question involved in the Miranda case. Four of the five had joined in previous dissents. However, starting back in 1896 when Stephen Johnson Field and John Marshall Harlan were members of the Court, as was Edward Douglas White—who later became Chief Justice—it was pointed out in the case of the United States against Wilson that the Constitution does not require what the Miranda decision required.

In 1912 Chief Justice Edward Douglas White held the same way and referred to and reaffirmed the Wilson case.

Also, Judge Oliver Wendell Holmes, Charles Evans Hughes, Joseph R. Lamar, and Willis Van Devanter—there was one vacancy on the Court—held the same way.

In another case, eight Justices of the Supreme Court reaffirmed that decision in 1958 in the case of Cecenia against Lagay. They reaffirmed the same decision.

The same thing happened in the case of Hayes against Washington as late as 1963. They reaffirmed this doctrine.

It was not until the Miranda decision that the Court dissented.

Forgetting about four of the five who had joined in previous dissents, we have 28 predecessors whom the Court overruled. For what? Who benefited from it? Law and order did not benefit from it, but *who did*?

The criminal that is running loose today benefited from it. We want safe streets. We will never get them until we take the criminals off the street.

Read the statements from prosecuting attorneys. Two thousand five hundred prosecuting attorneys have gone on record as saying this. It is not said merely by someone who wants to criticize the Supreme Court.

A lot of people are living in fear today and are living on the border of terror. They want some justice.

Instead of arguing these technicalities and saying that we had better not touch the Supreme Court, we should pass title II.

This would not be amending the Constitution. The Constitution was amended by the Court, or, more accurately, five members of the Supreme Court undertook to amend the Constitution.

Mr. LAUSCHE. When was that?

Mr. McCLELLAN. That was in the Miranda case in 1966.

The Constitution provides how it should be amended. Neither this body as such, nor the Supreme Court, has the right to do it.

We have to submit it to the people and they will have to assert the power which reposes in the Constitution.

Mr. LAUSCHE. Prior to 1966 was the law ever such as laid down by the Supreme Court in the Miranda case?

Mr. McCLELLAN. It never was, and the Court had repeatedly held that that was not the law.

Mr. FONG. Mr. President, will the distinguished Senator from Maryland yield me 2 minutes?

Mr. TYDINGS. Mr. President, I yield 2 minutes to the Senator from Hawaii.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii is recognized for 2 minutes.

Mr. FONG. Mr. President, the distinguished Senator from Arkansas quoted the letter of a distinguished defense attorney and also said that the prosecuting attorney of Baltimore County is in accord with the provisions of title II. The Senator also said that many judges are in accord with the provisions of title II.

The criminal law section of the American Bar Association is strenuously opposed to this title, just as is the board of governors of the American Bar Association, which has a membership of 130,000 lawyers in the United States. That board only yesterday unanimously adopted a resolution opposing title II of the bill.

The American Law Institute, an institute composed of prominent legal scholars, also states that it knows very little about the impact of the Supreme Court confession decision, so that we have very little as a basis for legislation.

The Judicial Conference of the United States is also diametrically opposed to every provision of the pending bill; but it said nothing about the provision dealing with the Wade case, which was decided only recently.

Mr. President, for more than 20 years the Federal Bureau of Investigation has followed the rule laid down in the Miranda case. When an accused is brought before the FBI, he is given the fourfold warning, as constitutionally required by the Miranda case.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. FONG. Mr. President, will the Senator from Maryland yield me an additional 2 minutes?

Mr. TYDINGS. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator from Maryland has 1 minute remaining.

Mr. TYDINGS. Mr. President, I yield my remaining minute to the Senator from Hawaii.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii is recognized for 1 additional minute.

Mr. FONG. Mr. President, the FBI has been following the rule laid down in the Miranda case. The action of the FBI in this respect has resulted in convictions. So, there is no reason why we should not follow the Miranda case. The Miranda and the Mallory decisions are reasonable decisions.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. McCLELLAN. Mr. President, I yield 1 minute to the distinguished Senator from Maine.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized for 1 minute.

Mrs. SMITH. Mr. President, I am not a lawyer. So, I cannot pass qualified judgment on the technical and legal aspects of this issue.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The ACTING PRESIDENT pro tempore. Will the Senator from Maine suspend a moment?

Let there be order in the Chamber.

The Senator from Maine may proceed.

Mrs. SMITH. Mr. President, I am not a lawyer. So I cannot pass qualified judgment on the technical and legal aspects of this issue. But I have seen enough of the alarming disregard for law and order encouraged and incited by a lack of real law enforcement, to make it crystal clear to me that if the public is to be protected against the criminals, title II should be enacted.

Mr. McCLELLAN. Mr. President, I wish to advise my colleagues that at the conclusion of the time I shall seek the floor to ask parliamentary questions in order to thoroughly clarify the issue, so we will know on what we are voting.

It is my understanding that the first vote will occur on the Tydings substitute, which is a substitute for the Hart substitute to strike title II. Is my understanding correct?

The ACTING PRESIDENT pro tempore. Is the Senator propounding a parliamentary inquiry?

Mr. McCLELLAN. Yes.

The ACTING PRESIDENT pro tempore. The Senator's understanding is correct.

Mr. McCLELLAN. If the Tydings amendment is rejected, it would simply mean do nothing; forget about it; perhaps some day in the future some congressional committee may study and report; we will do nothing. If the Tydings amendment is rejected, the vote would then recur on the Hart substitute.

The ACTING PRESIDENT pro tempore. If the Tydings amendment is rejected, the vote would immediately recur on the Hart substitute.

Mr. McCLELLAN. That would mean, then, that the Senate would be voting for the same thing again because it would do the same, in a little different language. The consequences would be the same.

If the Hart amendment is rejected and the Tydings amendment is rejected, then the motion would recur on the motion to strike the whole title. Have I stated the situation correctly?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. McCLELLAN. At that point, is not that title subject to division?

The ACTING PRESIDENT pro tempore. At the request of any Senator.

Mr. McCLELLAN. I will ask for the division. In my interpretation, the division will be in six or seven parts. Am I correct?

The ACTING PRESIDENT pro tempore. The Senator from Arkansas or any other Senator may request the division, as the Chair has examined it, in almost as many parts as there are sentences in the title.

Mr. McCLELLAN. I would say that seven parts would get to the real issue, so that each Senator would have an oppor-

tunity to vote on the portion he favors or does not favor.

I will ask for the division now, if I am permitted to do so under the rules. May I ask for the division at this time?

The ACTING PRESIDENT pro tempore. It is not the pending business at this time. The Senator may propound that request after the vote on the Hart amendment.

Mr. McCLELLAN. I give notice that I will make that request.

Is my understanding correct that if the request is made, it is mandatory that the division be ordered?

The ACTING PRESIDENT pro tempore. The Senator's understanding is correct.

Mr. McCLELLAN. It will be ordered.

On that basis, Senators may vote for any part they like and vote against any part they do not like. I understand that there will be an hour debate on each amendment to strike each section thereafter.

The ACTING PRESIDENT pro tempore. No. Under the unanimous-consent request and under the rules, there will be an hour debate on the Hart substitute if the Tydings substitute is rejected. But on the Senator's petition to divide the question to strike, the votes will recur immediately, one right after the other, without debate.

Mr. McCLELLAN. I shall ask that the vote recur first on the confessions section, and I shall ask that the vote next be on the Mallory rule, and the third vote on the two sections—one defining confessions and the other providing that a confession made to a third party will be admissible in evidence. There are three other sections in the bill. They are easily identified, and we will have separate votes on them. Am I correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. McCLELLAN. I ask Senators to vote these dilatory tactics out of this matter. Let us face up to the situation like men and women and vote for what we believe in, on each of these issues, yes or no.

Mr. President, there has been much talk about the Court and what the Court does. Our Founding Fathers never intended that we should have a judicial oligarchy in this country. That is what it is leading to. If we dare to do anything, if we dare to try, let us try.

It has been said that the Court will hold that what we do is unconstitutional. Maybe they will. But I do say, Mr. President, that we will have met our responsibility. We will have tried to protect the innocent people of this country. We will have tried to strengthen law enforcement.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. PASTORE. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. PASTORE. When we get to the point of the divisions, will those divisions be stated at that time?

The ACTING PRESIDENT pro tempore. They will be stated seriatim at that time.

Mr. PASTORE. So that we will know what the divisions are.

The ACTING PRESIDENT pro tempore. Each time, we will know.

Mr. PASTORE. I thank the Chair.

Mr BYRD of West Virginia. Mr. President, I ask unanimous consent that before the vote occurs, the Sergeant at Arms be directed to clear the Chamber and the lobby of all unauthorized personnel.

The ACTING PRESIDENT pro tempore. The Senator need not have unanimous consent.

The Chair takes judicial notice—if we may use that term—that too many people are on the floor who are not authorized to be here. The Chair requests that the Sergeant at Arms immediately clear from the floor all but Senators and those aides who are necessary to be present for the purpose of this vote.

Mr. McCLELLAN. Mr. President, I ask for order, so that we will be able to hear the rollcall.

The ACTING PRESIDENT pro tempore. The Senate will be in order.

The gallery is available for those aides and attachés who desire to hear the rollcall.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. McCLELLAN. A vote "yea" would be in favor of the Tydings substitute, which would do what I have said; and a vote "nay" would be to get a vote on each issue.

The ACTING PRESIDENT pro tempore. The Tydings substitute inserts language in lieu of the Hart substitute.

The question is on agreeing to amendment No. 804 of the Senator from Maryland. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BREWSTER. On this vote I have a live pair with the junior Senator from New York [Mr. KENNEDY]. If he were present, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. MANSFIELD (after having voted in the negative). On this vote I have a pair with the Senator from Minnesota [Mr. McCARTHY]. If he were present, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withdraw my vote.

Mr. GRIFFIN (after having voted in the negative). On this vote I have a live pair with the senior Senator from New York [Mr. JAVITS]. If present, he would vote "yea." If I were permitted to vote, I would vote "nay." I withdraw my vote.

Mr. DIRKSEN (after having voted in the negative). On this vote I have a pair with the senior Senator from California [Mr. KUCHEL]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. McCARTHY], the Senator from Wyoming [Mr. McGEE], the Senator from South Dakota [Mr. McGOVERN], the Senator from Oklahoma [Mr. MONRONEY], and the Senator from New Mexico [Mr. MONTOYA] are necessarily absent.

The Senator from Wisconsin [Mr. NELSON] is absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING], and the Senator from Oklahoma [Mr. MONRONEY] would each vote "yea."

Mr. DIRKSEN. I announce that the Senator from Oregon [Mr. HATFIELD] and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

If present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

The respective pairs of the Senator from New York [Mr. JAVITS] and that of the Senator from California [Mr. KUCHEL] have been previously announced.

The result was announced—yeas 31, nays 51, as follows:

[No. 140 Leg.]

YEAS—31

Aiken	Inouye	Pastore
Bayh	Jackson	Pell
Boggs	Kennedy, Mass.	Percy
Brooke	Long, Mo.	Proxmire
Burdick	Magnuson	Symington
Case	McIntyre	Tydings
Clark	Metcalf	Williams, N.J.
Cooper	Mondale	Yarborough
Fong	Morse	Young, Ohio
Hart	Moss	
Hartke	Muskie	

NAYS—51

Allott	Fulbright	Murphy
Anderson	Gore	Pearson
Baker	Hansen	Prouty
Bennett	Hayden	Randolph
Bible	Hickenlooper	Ribicoff
Byrd, Va.	Hill	Russell
Byrd, W. Va.	Holland	Scott
Cannon	Hollings	Smathers
Carlson	Hruska	Smith
Cotton	Jordan, N.C.	Sparkman
Curtis	Jordan, Idaho	Spong
Dodd	Lausche	Stennis
Dominick	Long, La.	Talmadge
Eastland	McClellan	Thurmond
Ellender	Miller	Tower
Ervin	Morton	Williams, Del.
Fannin	Mundt	Young, N. Dak.

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—4

Brewster, against.
Dirksen, against.
Griffin, against.
Mansfield, against.

NOT VOTING—14

Bartlett	Javits	McGovern
Church	Kennedy, N.Y.	Monroney
Gruening	Kuchel	Montoya
Harris	McCarthy	Nelson
Hatfield	McGee	

So Mr. TYDINGS' amendment No. 804 was rejected.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its

reading clerks, announced that the House had passed, without amendment, the following bill and joint resolutions of the Senate:

S. 561. An act to authorize the appropriation of funds for Cape Hatteras National Seashore;

S.J. Res. 142. A joint resolution to provide for the reappointment of Dr. Crawford H. Greenewalt as Citizen Regent of the Board of Regents of the Smithsonian Institution;

S.J. Res. 143. A joint resolution to provide for the reappointment of Dr. Caryl P. Haskins as Citizen Regent of the Board of Regents of the Smithsonian Institution; and

S.J. Res. 144. A joint resolution to provide for the reappointment of Dr. William A. M. Burden, as Citizen Regent of the Board of Regents of the Smithsonian Institution.

The message also announced that the House had passed the bill (S. 2884) to amend the Federal Voting Assistance Act of 1955, so as to recommend to the several States that its absentee registration and voting procedures be extended to all citizens temporarily residing abroad, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had passed the bill (S. 1581) to amend the Federal Voting Assistance Act of 1955 (69 Stat. 584), with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the concurrent resolution (S. Con. Res. 67) requesting the President to take action to insure the United States will derive maximum benefits from an expanded and intensified effort to increase the accuracy and extend the time range of weather predictions, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15131) to amend the District of Columbia Police and Firemen's Salary Act of 1958 to increase salaries, and for other purposes.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 16409) to amend the District of Columbia Teachers' Salary Act of 1955 to provide salary increases for teachers and school officers in the District of Columbia public schools, and for other purposes.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 859. An act for the relief of Public Utility District No. 1 of Klickitat County, Wash.;

H.R. 7481. An act to amend section 620, title 38, United States Code, to authorize payment of a higher proportion of hospital costs in establishing amounts payable for nursing home care of certain veterans;

H.R. 14074. An act to amend the act of September 9, 1963, authorizing the construction of an entrance road at Great Smoky Mountains National Park in the State of North Carolina, and for other purposes;

H.R. 14954. An act to amend title 38 of the United States Code to improve vocational rehabilitation training for service-connected veterans by authorizing pursuit of such training on a part-time basis;

H.R. 15387. An act to amend title 39, United States Code, to provide for disciplinary action against employees in the postal field service who assault other employees in such service in the performance of official duties, and for other purposes; and

H.R. 16902. An act to amend title 38 of the United States Code in order to promote the care and treatment of veterans in State veterans' homes.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 859. An act for the relief of Public Utility District No. 1 of Klickitat County, Wash.; to the Committee on the Judiciary.

H.R. 14074. An act to amend the act of September 9, 1963, authorizing the construction of an entrance road at Great Smoky Mountains National Park in the State of North Carolina, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 7481. An act to amend section 620, title 38, United States Code, to authorize payment of a higher proportion of hospital costs in establishing amounts payable for nursing home care of certain veterans;

H.R. 14954. An act to amend title 38 of the United States Code to improve vocational rehabilitation training for service-connected veterans by authorizing pursuit of such training on a part-time basis; and

H.R. 16902. An act to amend title 38 of the United States Code in order to promote the care and treatment of veterans in State veterans' homes; to the Committee on Labor and Public Welfare.

H.R. 15387. An act to amend title 39, United States Code, to provide for disciplinary action against employees in the postal field service who assault other employees in such service in the performance of official duties, and for other purposes; to the Committee on Post Office and Civil Service.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

Mr. HART. Mr. President, over the past few decades we have witnessed a dramatic increase in the incidence of crime. Today crime—the fact of crime and the fear of crime—touches the life of all Americans. Thousands of Americans are killed or injured each year by criminal acts. Many thousands more are unable to use the streets of our cities without fear, or to feel secure in their homes or stores. Property valued at almost $4 billion is lost through crime each year. Millions of dollars are taken from the productive economy by organized racketeers—money that should be in the pockets of the less fortunate or in the bank accounts of honest businessmen.

Instead of responding to meet this dramatic increase in crime, we have sorely neglected our system of criminal justice. Presently local law enforcement is undermanned and underpaid; correctional systems are poorly equipped to rehabilitate prisoners; courts at all levels are clogged and court procedures are often archaic; and local juvenile offender systems are understaffed and largely ineffective.

In 1965 we passed the Law Enforcement Assistance Act, a bill which I had introduced. It authorized a modest grant program geared to improve and upgrade our law-enforcement system. Under this act, the Justice Department has made grants totaling approximately $19 million to support more than 330 research and pilot projects in law enforcement.

Clearly, as was made evident by the President's Crime Commission in its February 1967 report, we must now beef up and go beyond the 1965 Law Enforcement Assistance Act if we are to meet today's challenge of crime.

Mr. President, title I of S. 917 represents a well-reasoned response to that challenge. Title I, originally known as the Safe Streets and Crime Control Act, is in the words of President Johnson "the cornerstone of the Federal anti-crime effort."

Title I rests upon the basic tenets of the President's Crime Commision report:

That crime prevention is a major national priority.

That better paid, better trained, better equipped police are urgently needed in almost every community.

That correctional and other law enforcement agencies must have better information on the causes and control of crime.

That we need substantially more—and more efficiently used—resources and personnel to provide faster action at all levels.

That the entire system of criminal justice, at every level of government, must be modernized.

At the same time, title I emphasizes flexibility and local responsibility by providing 100 percent grants for research and demonstration projects, 80 percent planning grants to State and local governments, 60 percent action grants to implement new programs, 50 percent construction grants for new facilities.

Thus, Mr. President, I wholeheartedly support title I as an effective response to our growing crime problem and an effort to catch up with the damage our neglect has caused our system of administering criminal justice.

Mr. President, as vigorously as I support title I, I oppose enactment of titles II and III of this bill.

The distinguished Senator from Maryland [Mr. TYDINGS] has detailed the constitutional and policy objections to title II which, if passed, would repeal such Supreme Court cases as *Miranda* v. *Arizona*, 384 U.S. 436 (1966); *Mallory* v. *U.S.*, 354 U.S. 449 (1957); and *U.S.* v. *Wade*, 388 U.S. 218 (1967); severely limit the appellate jurisdiction of the Supreme Court; and circumscribe the habeas corpus jurisdiction of the Federal courts.

Some 33 law schools and more than 150 legal scholars have recorded opposition to title II. One of those opposed to enactment of title II is Harvard Professor Archibald Cox, former Solicitor General of the United States. According to Professor Cox, three points are enough to demonstrate that title II is highly unsound legislation.

First, it is an exceedingly dangerous precedent for the legislative branch to overturn constitutional decisions of the Supreme Court by curtailing the Court's jurisdiction as title II would do. Today it is increasingly difficult, yet increasingly important, to maintain the rule of law. It encourages disrespect for law, however, for Congress to use political power to shut off access to normal judicial process as a method of preventing the enforcement of the Constitution.

Second, Congress has laid no foundation for such drastic action. It is not only possible but even probable that Congress could make enormously important contributions to the improvement of the law pertaining to confessions. The Miranda case should not be the last word. But, as matters stand, an insufficient time has elapsed to perceive the effects of the Miranda line of cases, and the Congress has not even conducted a thorough and systematic study of the problems of confessions in criminal cases. All title II accomplishes is to revive the old rule of voluntariness which, standing alone, has proved demonstrably inadequate to prevent the use of "the third degree" in procuring confessions from suspected criminals. To develop a new rule requires careful factual study of the consequences of the Miranda principle and the examination of alternatives. No such groundwork has been laid for the enactment of title II.

Third, proposed section 3502 of the United States Code is particularly objectionable. The power of the Supreme Court to reverse State convictions under the 14th amendment may have been employed in highly debatable cases, but it has also been necessary to prevent shocking travesties on justice. For example, in *Ashcraft* v. *Tennessee*, 322 U.S. 143, two defendants were convicted and sentenced to 99 years in the penitentiary almost entirely on the basis of confessions procured by holding them without sleep or rest, under a glaring light, for 36 hours of constant questioning, by teams of lawyers and investigators. In *Brown* v. *Mississippi*, 297 U.S. 278, the confession was obtained by twice hanging the defendant by the neck from a tree limb and then tying him to a tree and beating him until he confessed. The violence and torture in *Chambers* v. *Florida*, 309 U.S. 227, were scarcely less brutal. Ordinarily the State judges are quick to correct such travesties upon civilized justice. Unfortunately, there are exceptional cases in which the only corrective is the Supreme Court of the United States. Proposed section 3502 lumps all these cases together indiscriminately in curbing the Court's jurisdiction. The Court's effectiveness in correcting barbarities like Brown, Chambers, and Ashcraft ultimately depends upon its power to determine for itself whether fundamental rights were denied.

I doubt if the Senate was fully aware of the probable impact of title II upon cases like Brown, Chambers, and Ashcraft, that it would cut off Supreme Court review whenever a State court found that the confession was not the product of coercion.

Thus, Mr. President, I join my distinguished colleague from Maryland in opposing passage of title II. And I thank and congratulate him for the leadership he gave in the committee—where I supported his position—and now gives. At most the Senate should direct careful study of the implications and consequences of these very recent Supreme Court decisions which study Senator TYDINGS' amendment, as well as mine, authorize.

Mr. President, I also vigorously oppose passage of title III of S. 917.

CONSTITUTIONAL ISSUE

First, I have serious doubts about the constitutionality of title III. Proponents of title III cite the recent Supreme Court eavesdropping decisions in *Katz* v. *United States*, 389 U.S. 347 (1967) and *Berger* v. *New York*, 388 U.S. 41 (1967) for the proposition that Congress now has the constitutional green light to pass a court-ordered eavesdropping statute such as title III.

While mindful of the quote attributed to Chief Justice Hughes that "the Constitution is what the judges say it is," I believe a close reading of the Supreme Court's recent eavesdropping decisions in these two cases casts considerable doubt on the constitutionality of title III of S. 917.

1. BERGER *v.* NEW YORK, 388 U.S. 41 (1967)

The Supreme Court by a 6-to-3 decision reversed the conviction of Ralph Berger who had been convicted of conspiracy to bribe the chairman of the New York Liquor Authority. Evidence for conviction was obtained by eavesdropping authorized by a New York statute—New York Code Criminal Procedure 813-a—permitting law-enforcement eavesdropping for up to a 2-month period.

The Supreme Court held that the language of the New York law was too broad, resulting in a trespassory intrusion into a constitutionally protected area in violation of the fourth and 14th amendments. The Court specifically held that the provision in the New York statute authorizing eavesdropping for a 2-month period was unconstitutional. According to the Court, such eavesdropping is the equivalent of a series of intrusions, searches, and seizures pursuant to a single showing of probable cause. During such a long and continuous—24 hours a day—period, the conversations of any and all persons coming into the area covered by the eavesdropping device are seized indiscriminately and without regard to their connection with the crime under investigation (388 U.S. at 59).

2. KATZ *v.* U.S., 389 U.S. 347 (1967)

Six months after Berger against New York, the Supreme Court set aside a conviction based on evidence obtained from a bug placed by FBI agents on two public telephones that Katz habitually used.

In many ways the Katz decision represented a major victory for privacy. First, the Supreme Court finally overruled *Olmstead* v. *U.S.*, 277 U.S. 438 (1928), which had denied fourth amendment protection to eavesdropping which did not physically penerate one's premises. Katz thus brought wiretapping clearly within the fourth amendment's prohibition against "unreasonable searches and seizures"—thus impliedly requiring the exclusion from State courts of wiretapping evidence obtained in an unconstitutional manner.

Further, in Katz the Supreme Court discarded the "constitutionally protected areas" doctrine under which unlimited eavesdropping had been permitted in such places as prison visiting rooms, because such rooms had been deemed unprotected areas. Instead the Court held that the correct rule is "what a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

It is true that the Court in Katz stated that, had the eavesdropping been conducted pursuant to a court order, it would have been sustained (389 U.S. 347, 359). Nothing in Katz, however, supports the broad provisions of title III.

Katz involved that rare situation where electronic eavesdropping could be limited, not only with respect to time and place, but also to a specific person or persons and specific conversations. In Katz, FBI agents had established that Katz was in the habit of using certain public telephones at a certain location at a certain time to transmit wagering information. The FBI agents, therefore, installed a bug on the phone booth which was activated only when Katz entered the booth. The bug caught only Katz' end of the conversation and was turned off when he left.

In approving this kind of eavesdropping, the Court emphasized that no conversations of innocent persons were overheard. It noted that—

> On the single occasion where the statements of another person were inadvertently intercepted, the (FBI) agents refrained from listening to them (389 U.S. 347, 354).

The Supreme Court placed particular emphasis on the extremely narrow circumstances under which the surveillance in Katz was conducted:

> Accepting this account of the Government's actions as accurate, it is clear that *this surveillance was so narrowly circumscribed* that a duly authorized magistrate * * * clearly apprised of the precise intrusion could constitutionally have authorized, with appropriate safeguards, *the very limited search and seizure* that the Government asserts in fact took place (at 354). [Emphasis added.]

Katz thus permits eavesdropping in one of the rare situations where it can be carefully circumscribed—a bug activated only when the suspect uses the "bugged" premises and recording only particular conversations of the suspect. Supreme Court approval of such a narrowly circumscribed eavesdropping situation as Katz does not imply approval of a 30-day bug on a house or office—as is provided by title III—where many innocent people congregate to talk about many innocent things.

Katz is thus consistent with the language and tone of Berger, which disapproved the indiscriminate seizure of the conversations of innocent people when a bug is in continuous operation in an area during any lengthy period of time (388 U.S. at 59). Indeed, in both Berger and Katz the Court cited examples of narrowly circumscribed electronic eavesdropping which it had approved in prior decisions. As stated in Berger:

> This Court has in the past, under specific conditions and circumstances, sustained the

use of eavesdropping devices. See *Goldman* v. *U.S.*, supra; *On Lee* v. *U.S.*, supra; *Lopez* v. *U.S.*, supra; and *Osborn* v. *U.S.* supra (388 U.S. at 63).

These four eavesdropping cases cited approvingly by the Court in Berger involved, as did Katz, very circumscribed eavesdropping. In Goldman, an FBI detectaphone was installed to overhear four conversations to which an FBI informer was a party. In On Lee an informer wore a radio transmitter for his conversation with a specific suspect. In both Lopez and Osborn the Supreme Court upheld the use of an eavesdropping device wired to an informer and used to record the informer's conversations with a suspect. In each of these four cases, as in Katz, the eavesdropping the Supreme Court approved was carefully circumscribed and limited to specific conversations which the eavesdropper knew would take place.

The eavesdropping and wiretapping authorized by title III of S. 917, however, is essentially an indiscriminate dragnet. Section 2518(5) of title III authorizes wiretapping and eavesdropping orders for 30-day periods. During such 30-day authorizations, a title III bug or tap will normally be in continuous operation. Such a bug or tap will inevitably pick up all the conversations on the wire tapped or room bugged. Nothing can be done to capture only the conversations authorized in the tapping order. Thus, under title III, not only is the privacy of the telephone user invaded with respect to those calls relating to the offense for which the tap is installed, but all his other calls are overheard, no matter how irrelevant, intimate—husband-wife, doctor-patient, priest-penitent—or constitutionally privileged—attorney-client. Further, under title III, all persons who respond to the telephone user's calls also have their conversations overheard. Likewise, under a title III tap, all other persons who use a tapped telephone are overheard, whether they be family, business associates, or visitors; and all persons who call a tapped phone are also overheard.

To illustrate the indiscriminate nature of a title III tap, one need only consider the experience of a New York police agent who in the course of tapping a single telephone recorded conversations involving, at the other end, the Julliard School of Music, Brooklyn Law School, Western Union, Mercantile National Bank, several restaurants, a drugstore, Prudential Insurance Co., the Medical Bureau To Aid Spanish Democracy, dentists, brokers, engineers, and a New York police station.

Wiretapping and eavesdropping as authorized by title III thus represent a sweeping intrusion into private and often constitutionally protected conversations of many, and often innocent, persons. The effect of Berger and Katz is now to measure wiretapping and eavesdropping authorizations against the fourth amendment's requirements for a search warrant. Title III, as I see it, permits "general searches" by electronic devices, the offensive character of which was first condemned in *Entick* v. *Carrington*, 19 How. St. Tr. 1029 (1765), and which were then known as "general warrants."

The use of such "general warrants" was a motivating factor behind the Declaration of Independence:

> Under these "general warrants," customs officials were given blanket authority to conduct general searches for goods imported to the colonies in violation of the tax laws of the Crown. The fourth amendment's requirement that a warrant "particularly describe the place to be searched, and the persons or things to be seized" repudiated these general warrants (*Berger* at 58).

3. CONSTITUTIONAL REQUIREMENT OF PARTICULARITY

There is yet another fundamental inconsistency between title III and the requirements of the Constitution applicable to electronic surveillance, as interpreted by the Supreme Court in the Berger and Katz decisions. I believe that title III violates the requirement of these decisions that a warrant for electronic surveillance must particularly describe the conversations to be overheard.

As the Court emphasized time and again in Berger and Katz, the requirements of the fourth amendment applicable to wiretapping and eavesdropping are the same requirements applicable to conventional search warrants. Thus, it is clear that the overall purpose of Berger and Katz is to assimilate electronic surveillance to the strict requirements applicable to searches and seizures for tangible physical objects.

It has long been established that a conventional search warrant must describe with particularity the object to be seized, and that a judge authorizing the issuance of a warrant for the object must have probable cause to believe that the described object will be found on the premises to be searched.

Under rule 41(c) of the Federal Rules of Criminal Procedure, of course, the requirements applicable to nighttime searches are more stringent than for searches to be executed in daytime. Thus a warrant for a daytime search may be issued on the basis merely of a showing of probable cause for belief that the object named in the warrant will be found on the premises to be searched. A warrant may not be issued for a nighttime search, however, unless the issuing judge finds as a fact that the object will be found on the premises. Title III draws no distinction between daytime and nighttime searches, but authorizes round-the-clock surveillance for the entire 30-day period of the warrant.

It is true that section 2518(3)(b) of title III requires a finding of probable cause for belief that particular communications concerning the offense named in the warrant will be intercepted. That provision, however, pays only lipservice to the constitutional mandate. The lengthy period of surveillance authorized in title III—up to 30 days, with unlimited renewals for fresh periods of 30 days each—belies the apparent adherence of title III to the requirement of particularity.

No one would suggest that a conventional search warrant may validly be issued to authorize a law-enforcement officer to enter a private home or office and embark on a search lasting even a few days, let alone authorize the officer to move into the premises for a month.

Conventional searches lasting even a few hours have been roundly condemned in the courts as general, or "ransacking," searches. Yet, it is precisely such a ransacking search that title III authorizes. A search lasting for a period of days or months can hardly be a search for a particularly described object. Unless we are to define "particularity" in novel terms, completely divorced from the requirements long held applicable to traditional search warrants, title III cannot stand.

Fortunately, the circumstances of the Katz case offer a clear example of what the Supreme Court intended as a valid application of the particularity requirement in existing search-and-seizure law to electronic surveillance. In Katz, the Federal investigating agents obviously had probable cause to believe that the particular communications made by the suspect from the public telephone booth were themselves part of the suspect's ongoing criminal activities. An application by the agents for a warrant authorizing the surveillance could clearly have described the communications to be intercepted with precisely the sort of particularity that is required in warrants authorizing searches for tangible physical objects.

The surveillance authorized by title III, however, is vastly different. It ranges far beyond the circumstances of Katz. Instead of requiring a meaningful description of particular communications to be intercepted, it authorizes all conversations of the person named in the warrant to be intercepted over the entire period of the surveillance, with law-enforcement officers authorized to sift through the many varied conversations, innocent and otherwise, that take place during the period.

No search warrant could constitutionally authorize all of a person's future written statements to be seized for a 30-day period, in the hope that one or another of the statements would contain certain incriminating information. The constitutional protection for oral statements can be no less. I suggest that no warrant should be able to authorize all of a person's conversations to be seized for a 30-day period, in the hope that an incriminating conversation will be intercepted. Yet, this is precisely the sort of unlimited search contemplated by title III. It was not contemplated, nor is it permitted by the Constitution.

POLICY CONSIDERATIONS

Usually, one who opposes legislation in the belief it is unconstitutional opposes it also as unwise and undesirable. There is a chicken-egg question here, admittedly, and my opposition to legalizing wiretapping and eavesdropping goes beyond the constitutional doubts I have about title III.

Wiretapping and other forms of eavesdropping are recognized by even their most zealous advocates as encroachments on a man's right to privacy, characterized by Justice Brandeis as "the most comprehensive of rights and the right most valued by civilized men."

In yesteryear, a man could retire into his home or office free from the prying eye or ear. That time is now long past. Transmitting microphones the size of

a sugar cube can be bought for less than $10. Other gadgets now enable a would-be snooper in New York to eavesdrop in Los Angeles merely by dialing a telephone number. This is done by attaching to the telephone in Los Angeles a beeper which converts the telephone into a transmitter without its ever leaving its cradle.

Directional microphones of the "shotgun" and parabolic mike type make it possible, by aiming the mike at a subject, to overhear conversations several hundred feet away. Laser beams permit an eavesdropper to monitor conversations in rooms up to half a mile away by aiming the beam at a thin wall or window. And the experts now tell us that in the years to come, as the methods of eavesdropping technology surge forward, the problems of protecting personal privacy will even further intensify.

Against this backdrop of diminishing individual privacy, proponents of title III now want to legitimate law enforcement wiretapping and eavesdropping. Clearly, if such an effort is successful, today's narrowing enclave of individual privacy will shrink to the vanishing point.

Personal privacy is not the only basic right wiretapping and eavesdropping circumscribe.

Private property is a basic institution in our democratic country. Without it, individualism and freedom wither and die, no matter how democratic a government purports to be. One of the major purposes of our Constitution and Bill of Rights was to safeguard private property.

One of the most important characteristics of private property is the right to possess it exclusively—to keep all strangers out. The householder may shut his door against the world.

This right of a citizen to shut the door against anyone, even the King himself, is part of our ancient heritage. One of the great ends for which men entered into society was to protect their property. Under common law, every invasion of private property, no matter how minute, was a trespass, even if no damage was done. And the King's man, entering without sanction of law, was as much a trespasser as the ordinary citizen.

Make no mistake about it: Eavesdropping and wiretapping are trespasses against the home. They are more serious trespasses than an unlawful search of the premises because they continue over long periods of time unknown to the householder. Thus to those who value the institution of private property, eavesdropping and wiretapping have always been regarded as unacceptable. That property shall not be immune from all control and entry, however, long has been accepted. Overriding claims of public health and safety needs, for example, have justified carefully defined limitations on freedom and use of private property.

Is there such an overriding claim here? Is there so great a need for wiretapping as to allow it as title III proposes, assuming it is constitutionally permitted?

Despite the clearcut invasion of privacy, there is a great clamor for wiretapping and bugging from certain of the law enforcement community. Yet there is in fact serious doubt and disagreement as to the need for such authority in dealing with crime. According to this Nation's highest ranking law enforcement officer, U.S. Attorney General Ramsey Clark:

> Public safety will not be found in wiretapping. Security is to be found in excellence in law enforcement, in courts and in corrections * * *. Nothing so mocks privacy as the wiretap and electronic surveillance. They are incompatible with a free society. *Only the most urgent need can justify wiretapping and other electronic surveillance. Proponents of authorization have failed to make a case—much less meet the heavy burden of proof our values require. Where is the evidence that this is an efficient police technique? Might not more crime be prevented and detected by other uses of the same manpower without the large scale, unfocused intrusions on personal privacy that electronic surveillance involves?* [Emphasis added.]

Ray Girardin, speaking as police commissioner of Detroit, said:

> * * * from the evidence at hand as to wiretapping, I feel that it is an outrageous tactic and that it is not necessary and has no place in law enforcement.

Nor are the Attorney General and Commissioner Girardin alone in their views. Back in the 1920's, 1930's, and 1940's, when we also had a serious crime problem, Attorneys General Harlan F. Stone and Robert H. Jackson condemned wiretapping as inefficient and unnecessary.

As Attorney General Robert H. Jackson said before World War II:

> The discredit and suspicion of the law-enforcing branch which arises from the occasional use of wiretapping *more than offsets the good which is likely to come of it.* [Emphasis added.]

It is far from clear that crime cannot be fought without wiretapping and eavesdropping. Rifling the mails and reading private correspondence, suspension of the fifth amendment's privilege against self-incrimination, and judicious use of the thumbscrew and rack would probably help the police secure more convictions. This country, however, has wisely seen fit to forbid the police from using such techniques; for the past 34 years Congress also wisely classified wiretapping as a forbidden police method because the dangers inherent in it to innocent persons far outweigh any benefit it may yield to law enforcement. As Justice Holmes said in the first eavesdropping case to confront the Supreme Court:

> For my part I think it is a less evil that some criminals should escape than that a government should play an ignoble part (dissent, *Olmstead* v. *U.S.* 277 U.S. 438).

When the Government overhears clients talking to their attorneys, husbands to their wives, ministers to their penitents, patients to their doctors, or just innocent people talking to other innocent people, it is clearly playing an "ignoble part."

THE JOHNSON ADMINISTRATION POSITION ON EAVESDROPPING

President Johnson and Attorney General Clark have recognized the clear threat to privacy wiretapping and eavesdropping pose.

In his state of the Union address in 1967, the President stated:

> We should protect what Justice Brandeis called the "right most valued by civilized men"—the right to privacy. We should outlaw all wiretapping—public and private—wherever and whenever it occurs, except when the security of the Nation itself is at stake—and only then with the strictest safeguards. We should exercise the full reach of our constitutional powers to outlaw electronic "bugging" and "snooping." [Emphasis added.]

On February 8, 1967, the President sent to Congress his Right of Privacy Act (S. 928) which outlaws electronic eavesdropping except in national security cases. Twenty-two Senators cosponsored S. 928. Although I feel S. 928's national security provisions could be tighter, I commend the President, because S. 928 represents a tremendous step forward for privacy. Under S. 928, neither the Government nor private citizens could legally use today's frightening panoply of eavesdropping devices to snoop on our citizens. Under S. 928, individual privacy and the institution of private property would once again be meaningful terms.

On February 7, 1968, in his special message on crime to Congress, the President again called for passage of the administration's Right to Privacy Act (S. 928).

Title III rejects the approach recommended by the President and supported by the Attorney General.

For nearly four decades Congress wisely has rejected numerous bills similar to title III.

In 1948, Orwell wrote a book, "1984," in which he painted a bleak prophecy of what life would be like 16 years from now:

> The telescreen received and transmitted simultaneously. Any sound that Winston made, above the level of a very low whisper, would be picked up by it; moreover, so long as he remained within the field of vision which the metal plaque commanded, he could be seen as well as heard. There was of course no way of knowing whether you were being watched at any given moment. . . . You had to live—did live, from habit that became instinct—in the assumption that every sound you made was overheard and, except in darkness, every movement scrutinized.

In terms of the technological advances in the field of electronic eavesdropping, 1984 is clearly upon us. I, for one, however, do not want to see the Government given the right to use, especially when their use will have little effect in lessening crime, 1984's tools against its citizens.

Therefore, I oppose Senate passage of title III. While I was not successful in committee in this effort, I hope the Senate will reject this doubtfully constitutional and thoroughly offensive and dangerous course.

Mr. President, I support passage of title IV of S. 917.

To me it makes sense to ban interstate sales of handguns—pistols and revolvers—these are the weapons most often used in crimes, and most States regulate their sale. Buying handguns by mail order circumvents State law, and I believe it should be prohibited.

Title IV is designed to reduce access to handguns for criminals, juveniles, and fugitives by requiring that handguns must be bought in the purchaser's home State and prohibiting mail-order sales of handguns, except between licensed dealers. Also, under title IV dealers cannot sell handguns to out-of-State purchasers or minors, fugitives, or felons. These restrictions will assist States enforce whatever gun laws they enact.

Title IV does not adversely affect legitimate mail-order and over-the-counter purchases of rifles and shotguns. Few States have any restrictions on the sale of rifles; a mail-order ban would thus simply force buyers to make their purchases at a local store. It would do little to keep guns out of the hands of criminals and would prevent the honest sportsman from shopping the catalogs.

Mr. President, every hour the Senate delays passing titles I and IV prevents us from responding effectively to the challenge of crime. Passage of titles II and III, however, rather than being an effective response to the challenge of crime, would do violence to constitutional principle and basic individual rights.

Therefore, I urge swift passage of titles I and IV and prompt rejection of titles II and III.

As in past times of crisis, there are those who would defend freedom by narrowing its scope. Unless titles II and III are excised, I would consider this bill as nicking away at constitutional freedom and, as I did in committee, vote against it.

Mr. METCALF. Mr. President, the controversy which we are engaged in over title II of the crime bill, S. 917, is reminiscent of the last days of the 85th Congress when I was a Member of the other body and several bills limiting the power of the Supreme Court were still pending. The House sent to the Senate such legislation as the notorious H.R. 3, which was a broad preemption bill, a bill modifying the Supreme Court's decision in the Mallory case (*Mallory* v. *United States*, 354 U.S. 449), and a bill to limit Federal judicial review of State criminal trials by habeaus corpus.

In that year Senator HUMPHREY and Senator Douglas led the assault on the legislation, and when Congress adjourned a little group of Senators had defeated the congressional attack on the courts.

When the Supreme Court misjudges legislative intent, misconstrues legislative language, or points out that a statute is indefinite or obscure, then we, as legislators, have the duty and obligation to examine the decision and correct the wrong legislative interpretation, redefine the crime, or clarify the language. But title II of S. 917 does not confront us with either questions of statutory interpretation or a determination of legislative intent. What is at stake here is the inherent right of the Supreme Court to review cases which on their facts present constitutional questions.

The questions presented in the Miranda (*Miranda* v. *Arizona*, 380 U.S. 436) and Wade (*United States* v. *Wade*, 388 U.S. 218) decisions did not involve either statutory interpretation or a construction of legislative intent. The issues involved an interpretation of the Constitution. Disagreement with those decisions does not carry with it the right to reverse those cases by legislative action. Procedurally the only way a reversal can be effected is to amend our Constitution. It is clear to me that legislative action such as that contemplated here, will be held unconstitutional by the Court. This was also clear to the Attorney General of the United States last June and he so advised the Subcommittee on Criminal Laws and Procedures—hearings, pages 81–82.

No one has questioned the jurisdiction of the Court to declare title II unconstitutional. That principle was established as far back as 1803 in the historic decision of *Marbury* v. *Madison*, 1 Cranch. 137. The committee report takes note of this possibility but dismisses it quite simply:

> No one can predict with any assurance what the Supreme Court might at some future date decide if these provisions are enacted. The committee has concluded that this approach to the balancing of the rights of society and the rights of the individual served us well over the years, that it is constitutional and that Congress should adopt it. After all, the Miranda decision itself was by a bare majority of one, and with increasing frequency the Supreme Court has reversed itself. The committee feels that by the time the issue of constitutionality would reach the Supreme Court, the probability rather is that this legislation would be upheld (pg. 51).

We can predict with assurance what the Supreme Court will do if the provisions of title II are enacted. We have only to turn to the Miranda decision for our answer:

> It is also urged upon us that we withhold decision on this issue until state legislative bodies and advisory groups have had an opportunity to deal with these problems by rule making. We have already pointed out that the Constitution does not require any specific code of procedures for protecting the privilege against self-incrimination during custodial interrogation. Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it. In any event, however, the issues presented are of constitutional dimensions and must be determined by the courts. The admissibility of a statement in the face of a claim that it was obtained in violation of the defendant's constitutional rights is an issue the resolution of which has long since been undertaken by this Court. See *Hopt* v. *Utah*, 110 U.S. 574 (1884). Judicial solutions to problems of constitutional dimension have been evolved decade by decade. As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when *Escobedo* was before us and it is our responsibility today. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." 384 U.S. 436, 490–491.

On May 6, 1967, the Court reaffirmed its Miranda decision and in doing so stated that the whole purpose of that decision was "to give meaningful protection to Fifth Amendment rights"—*Mathis* v. *U.S.*, No. 726, October term, 1967.

The Court could have waited until after we had concluded our consideration of S. 917 before acting on the Mathis case but it chose not to. This should give inkling to those who profess to have no way to predict what the Court might do if the provisions of title II are adopted.

If this statute is adopted convictions will undoubtedly be obtained under its aegis. By the time a case gets to the Court, the statute will be held unconstitutional without serious question. But what troubles me are all those cases which will subsequently be dismissed as a result of congressional action if this legislation is accepted in its present form. There will be people walking the streets only because we took the wrong procedural path by taking the decision in our hands rather than attempting to amend the Constitution. And I want to make it clear that I do not advocate a constitutional amendment. I am one of those people who rests easier as a result of the Miranda and Wade cases. What I do advocate for those who are spending sleepless nights over these decisions is to do it the right way or leave it alone. The satisfaction of insult will be far outweighed by the certain dire consequence of affirmative legislative action.

Mr. President, the Sacramento Bee made this the subject of an editorial on May 7. So that other Senators may have the benefit of the statistics contained in this editorial, I ask unanimous consent that it be included at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

TRUTH IS COURTS DO IMPEDE CRIME WAVE

Some critics of this nation's outstanding judicial system have had a field day going about the land feeding the fears of the timid, contending the courts are at fault for all sorts of social ills.

Particularly they blame the courts—and more especially the United States Supreme Court—for "coddling criminals."

One of the most vociferous exponents of this distortion is Max Rafferty, a candidate for the United States Senate from California.

He contends the "great national crime wave started about the time the Supreme Court started interpreting the law the way it thought the law should have been written."

No coddler of facts, this Rafferty.

What is the truth?

California Supreme Court Justice Stanley Mosk recently stated it. In a talk before the Santa Monica Bar Association he said:

"A dispassionate study of authoritative figures demonstrates that our courts are more effective, deterring crime more vigorously and convicting more guilty defendants than ever before in our history."

Official statistics cited by Mosk show the number of persons convicted of felonies in California jumped from 10,200 in 1947 to 32,000 in 1966. Instead of dropping because of court decisions, the percentage of those persons charged with felonies who were actually convicted has jumped from 80 percent in 1947 to 87 percent in 1966.

Despite all the controversial decisions which are supposed to be handcuffing our police, Mosk said, the number of criminal defendants who have pleaded guilty has gone up from 8,190 in 1947 to 23,089 in 1966—the highest in the state's history. These increases are greater than the increase in population.

The true situation is, as Mosk stated it, firm and severe justice is being dispensed in California in spite of those who contend the courts are not alert to the rights of all citizens.

Mr. METCALF. Mr. President, that portion of title II which deals with the

admissibility of confessions lists five criteria which the trial judge shall take into consideration when determining whether a confession was voluntarily given. The bill then proceeds to state:

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

This means that first, regardless of the time elapsing between arrest and arraignment; second, regardless of whether the defendant knew the nature of the offense with which he was charged or of which he was suspected; third, regardless of whether or not such defendant was advised of his fifth amendment rights; fourth, regardless of whether he had been advised of his sixth amendment rights; and fifth, regardless of whether the defendant was without the assistance of counsel when questioned and when giving a confession, the trial judge could determine that the confession given was made voluntarily and no Federal court including the Supreme Court shall have jurisdiction to review the trial judge's determination.

Mr. President, I have searched the hearing record and nowhere have I been able to find any justification for such drastic action. Aside from the constitutional argument against a legislative attempt to remove jurisdiction from the Federal courts, I could not allow the angry mood of this section of the bill to go without comment.

Mr. President, the Association of the Bar of the City of New York recently has recommended that title II be defeated as an unwise and probably unconstitutional intrusion by Congress into areas of proper Federal judicial authority. So that other Senators may have the benefit of their research on this important matter, I ask unanimous consent for their report to be printed at this point in the RECORD.

There being no objection, the report was ordered printed as follows:

[From the Association of the Bar, of the City of New York, N.Y.]

PROPOSED LEGISLATION RELATING TO FEDERAL JURISDICTION IN CONFESSION CASES

BY THE COMMITTEES ON CIVIL RIGHTS AND FEDERAL LEGISLATION

The Senate now has before it as Title II of the "Safe Streets Bill" (S. 917) (See Appendix), a proposal which would, among other provisions:

(1) overturn decisions of the Supreme Court regulating the reception into evidence in federal prosecutions of confessions obtained under certain circumstances, notably *Miranda* v. *Arizona*, 384 U.S. 436 (1966), *Mallory* v. *United States*, 354 U.S. 449 (1957) and their progeny;

(2) preclude all federal courts from reviewing the decisions of state courts of last resort sustaining trial court decisions admitting confessions as voluntary;[1]

(3) depriving the Supreme Court and other federal appellate courts of jurisdiction to review the admissibility of "eye witness" testimony in federal courts; and

(4) withdrawing from all federal courts jurisdiction to entertain applications for writs of habeas corpus challenging convictions obtained in state courts.

We deplore this proposal as exceedingly unwise and, beyond that, we believe that it raises grave constitutional issues. We most strongly urge that the Senate reject Title II.

Our opposition is based on our conclusions that: as a matter of technique, the legislation represents a blatant assault on the federal judiciary constituting a misuse of whatever power Congress may possess over its jurisdiction; that as a matter of substance it would overturn Supreme Court decisions which have usefully advanced the administration of justice; and that the proposal probably is unconstitutional as a violation of the Fifth Amendment and an unlawful suspension of the writ of habeas corpus.

I

We oppose the enactment of Title II in the first instance because we deem it a deplorable practice to attempt to overrule "unpopular" decisions of the federal courts by depriving them of jurisdiction to render such decisions. Such a process involves an intolerable assault on the independence and integrity of the judiciary and few steps could be better calculated to undermine respect for the processes of justice. When court rulings reach undesirable results, they should be corrected either by appropriate substantive legislation or, if the decisions are of constitutional dimension, by constitutional amendment, or by a process of constructive criticism which may lead the courts to reach different results in future litigation. This has been the general course of our constitutional history.

Attempts to defeat constitutional decisions by removing the jurisdiction of the courts have been made from time to time but, to the credit of Congress, such attempts have rarely been considered seriously and have been almost uniformly unsuccessful.[2]

We draw on this virtually unbroken history to urge defeat of this attack on the federal judiciary as an improvident exercise of Congressional power.

We oppose Title II on the further ground that it attempts to overrun decisions of the Supreme Court which, in our judgment, have enhanced the body of law relating to the administration of criminal justice.[3] The assumption underlying the inclusion of Title II in a bill devoted to "Safe Streets" is that attention to the requirements of procedural due process contribute to making our streets unsafe. We disagree with this rhetorical link and, further, we believe that the evidence thus far produced shows that these decisions have not resulted in any substantial diminution of the power of our courts to bring criminals to justice.

Accordingly, we oppose the enactment of Title II on the grounds that it is bad legislation both as to technique and as to substance.

II

Beyond our disagreement with the substance of the bill as a matter of legislative policy, we also oppose its enactment because we seriously doubt its constitutionality in several respects.

First, in our judgment, the attempt of the proposed legislation to overrule such decisions as *Miranda* probably violates the Fifth Amendment.

Miranda v. *Arizona, supra*, was plainly a decision based on constitutional grounds. The Court stated that explicitly (384 U.S. at 445):

The *constitutional* issue we decided in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way. (Emphasis supplied.)

It went on to hold that the rule it there announced was required to protect the criminal accused from intrusion on his constitutional privilege against self-incrimination under conditions it held to be "inherently" coercive. We do not believe that it lies in the power of Congress to overturn, by legislation, standards of criminal procedure declared by the Supreme Court to be of constitutional import.

When *Mallory* was decided, however, it purported to be a use of the supervisory power of the Supreme Court over the admissibility of certain evidence in federal courts. There is doubt, however, whether confessions obtained during the protracted detention of a criminal accused, without arraignment, are any longer subject to condemnation only on so narrow a basis. In the light of *Miranda*, Mallory may now well be recognized as a constitutional rule.

Secondly, there is ground for genuine doubt that Congress has the power by virtue of its statutory control over the appellate jurisdiction of the Supreme Court and the jurisdiction of inferior federal courts arbitrarily to deprive criminal defendants of a federal forum in which to test the constitutionality of procedures employed to convict them.

For one thing, the statutory power of the Congress under Article III must, we believe, be exercised consistently with the terms of the Fifth Amendment. We believe a serious constitutional issue is raised under that Amendment when Congress attempts to foreclose recourse to federal appellate courts to vindicate rights protected by that Amendment.

The section of Title II which would forbid collateral attack upon the constitutionality of state court convictions through the use of Federal habeas corpus procedures seems to be subject to the same infirmity.

Moreover, Article I, § 9, Clause 2 of the Constitution forbids the suspension of the writ of habeas corpus except in cases of invasion or rebellion. We believe that such a blanket withdrawal of the power to issue the writ may well violate the habeas corpus clause. In *Fay* v. *Noia*, 372 U.S. 391 (1963), which decision this provision of Title II is intended to overrule, the Court did not reach the constitutional question presented under the habeas corpus clause but its dictum is instructive (372 U.S. at 406):

"We need not pause to consider whether it was the Framers' understanding that congressional refusal to permit the federal courts to accord the writ its full common-law scope as we have described it might constitute an unconstitutional suspension of the privilege of the writ. There have been some intimations of support for such a proposition in decisions of this Court. Thus Mr. Justice (later Chief Justice) Stone wrote for the Court that '[t]he use of the writ . . . as an *incident of the federal judicial power* is implicitly recognized by Article I, § 9, Clause 2 of the Constitution.' *McNally* v. *Hill*, 293 U.S. 131, 135. (Italic supplied.) To the same effect

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[1] Legislation of similar, though not identical, import was introduced in the House of Representatives as H.R. 16106. That bill, in addition, would deprive the Supreme Court of jurisdiction to review the admissibility of confessions in federal criminal cases except to consider their "voluntary character". We address ourselves to Title II because of the apparently serious consideration now being given to it.

[2] The most recent serious effort to reverse such Supreme Court decisions was sponsored by Senator Jenner in 1958 and was defeated on the Senate floor. The principal exception to the otherwise general defeat of such measures occurred in 1868 in reaction to a challenge to military reconstruction in the Southern states. See *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869).

[3] Elsen and Rosett, "Protections For the Suspect under *Miranda* v. *Arizona*", 67 Col. L. Rev. 645 (April, 1967); Givens, "Reconciling the Fifth Amendment With the Need for More Effective Law Enforcement", 52 A.B.A.J. 443 (1966).

are the words of Chief Justice Chase in *Ex parte Yerger*, 8 Wall. 85, 95: 'The terms of this provision [The Suspension Clause] necessarily imply judicial action. And see *United States* ex rel. *Turner* v. *Williams*, 194 U.S. 279, 295 (concurring opinion). But at all events it would appear that the Constitution invites, if it does not compel, cf *Byrd* v. *Blue Ridge Rural Elec. Cooperative*, 356 U.S. 525, 537, a generous construction of the power of the federal courts to dispense the writ conformably with common-law practice."

The Court went on to hold that "conformably with common-law practice" the writ would lie to challenge collaterally the constitutionality of a state court conviction obtained through the use of a coerced confession. The "intimations" discerned and collected by the Court in *Noia*, and its own extended treatment of the subject of the "Great Writ" in its opinion, strongly suggest to us that the proposed legislation would probably be held invalid as an illegal suspension of the writ.

Conclusion

We recommend that Title II of the Safe Streets Bill be defeated as an unwise and probably unconstitutional intrusion by the Congress into areas of proper federal judicial authority.

MAY 15, 1968.

Respectfully submitted,

Louis A. Craco, *Chairman;* Edward Brodsky; Milton M. Carrow; Ambrose Doskow; James F. Downey, III; Michael Seth Fawer; Patricia Garfinkel; Peter J. Gartland; R. Kent Greenawalt; Richard A. Givens; Arthur M. Handler; Conrad K. Harper; Peter H. Morrison; Judson A. Parsons, Jr.; Leon B. Polsky; Norman Redlich; Leonard B. Sand; J. Kenneth Townsend, Jr.; William J. Williams; Committee on Civil Rights.

Eastman Birkett, *Chairman*; Thomas L. Bryan; John F. Cannon; Robert L. Carter; Sheldon H. Elsen; James T. Harris; Louis Henkin; Edwin M. Jones; Geoffrey M. Kalmus; Robert M. Kaufman; Robert E. Kushner; Kenneth J. Kwit; Arthur Liman; Gerald M. Levin; Jerome M. Le Wine; Jerome Lipper; Louis Lowenstein; John Lowenthal; Edward A. Miller; Gerald M. Oscar; Alan Palwick; Myra Schubin; Jerome G. Shapiro; E. Deane Turner; Leon H. Tykulsker; Committee on Federal Legislation.

Mr. METCALF. Mr. President, in discussing the constitutionality of title II the Senate Judiciary Committee report at page 56 states:

The leading case in this area is Ex Parte McCardle, 7 Wall. (74 U.S.) 506 (1868), in which the Court accepted a withdrawal by Congress of its appellate jurisdiction immediately affecting a case already on its docket. The Court dismissed the case, saying that "without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the case" (supra, 514).

However—

The McCardle case said nothing about the power of Congress to limit appeals from state courts where federal rights were involved. This was not in issue since at that time the Court had full jurisdiction to hear appeals from state courts in those cases. Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816).

On the basis of stare decisis, therefore, the *McCardle* case does not stand for the proposition that Congress has plenary control over the Court's appellate jurisdiction. The actual limitation imposed there was slight. If the Court is ever faced with the question of whether a withdrawal of appellate jurisdiction is such as to violate an independent constitutional provision, *McCardle* will not reasonably bar the Court from holding that it does. (Limitations on the Appellate Jurisdiction of the Supreme Court, 20 U. Pittsburgh L. Rev. 108–109 (1958).)

As an example of what we can expect to happen if title II is enacted, I want to discuss the case of *Payne* v. *State of Arkansas*, 356 U.S. 560 (1958). The evidence as to the voluntariness of the confession was undisputed. The defendant Payne was sentenced to death in the electric chair. Here are the facts:

The undisputed evidence in this case shows that petitioner, a mentally dull 19-year old youth, (1) was arrested without a warrant, (2) was denied a hearing before a magistrate at which he could have been advised of his right to remain silent and of his right to counsel, as required by Arkansas statutes, (3) was not advised of his right to remain silent or of his right to counsel, (4) was held incommunicado for three days, without counsel, advisor or friend, and though members of his family tried to see him they were turned away, and he was refused permission to make even one telephone call, (5) was denied food for long periods, and, finally, (6) was told by the chief of police "that there would be 30 or 40 people there in a few minutes that wanted to get him," which statement created such fear in petitioner as immediately produced the "confession" (at page 567).

The Court had this to say about Federal-State jurisdiction in these matters as it reversed the conviction by a vote of 7 to 2:

"The use in a state criminal trial of a defendant's confession obtained by coercion—whether physical or mental is forbidden by the Fourteenth Amendment. (Cases cited) Enforcement of the criminal laws of the States rests principally with the state courts, and generally their findings of fact, fairly made upon substantial and conflicting testimony as to the circumstances producing the contested confession—as distinguished from inadequately supported findings or conclusions drawn from uncontroverted happenings—are not this Court's concern; (cases cited) yet where the claim is that the prisoner's confession is the product of coercion we are bound to make our own examination of the record to determine whether the claim is meritorious. 'The performance of this duty cannot be foreclosed by the finding of a court, or the verdict of a jury, or both.'" (Cases cited) (pages 561–562).

Mr. President, under the provisions of title II, the Supreme Court would be powerless to hear the Payne case and, absent a last minute commutation from the Governor, this man under these facts would have perished in the electric chair. I can only hope that we have not regressed this far in our thinking and attitude toward the Court today.

In 1960, a three-judge Federal District Court in *Bush* v. *Orleans School Board* (D.C.La.), 188 F. Supp. 916, 924–925 (1960), affirmed 365 U.S. 569 (1961), strongly set forth the proposition of the necessity in our system or final Federal judicial review of Federal questions. The case concerned the doctrine of "interposition," but the purport of the Court's remarks is equally applicable to the present question.

[T]he inquiry is who, under the Constitution has the final say on questions of constitutionality . . . In theory, the issue might have been resolved in several ways. But as a practical matter, under our Federal system the only solution short of anarchy was to assign the function to one supreme court. That the final decision should rest with the judiciary rather than the legislature was inherent in the concept of constitutional government in which legislative acts are subordinate to the paramount organic law, and, if only to avoid "a hydra in government from which nothing but contradiction was confusion can proceed," final authority had to be centralized in a single national court. *The Federalist*, nos. 78, 80, 81, 82. As Madison said before the adoption of the Constitution: "Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated." *The Federalist*, no. 39.

And so, from the beginning it was decided that the Supreme Court of the United States must be the final arbiter on questions of constitutionality. It is of course the guardian of the Constitution against encroachments by the National Congress. *Marbury* v. *Madison*, 1 Cr. 137. But more important to our discussion is the constitutional role of the Court with regard to state acts. The original Judiciary Act of 1789 confirmed the authority of the Supreme Court to review the judgments of all state tribunals on constitutional questions, Act of September 24, 1789 Sec. 25, 1 Stat. 73, 85. See *Martin* v. *Hunter's Lessee*, *supra; Worcester* v. *Georgia*, 6 Pet. 515; *Cohens* v. *Virginia*, 6 Wh. 264; *Ableman* v. *Booth*, 21 How. 506. Likewise from the first, one of its functions was to pass on the constitutionality of state laws. *Fletcher* v. *Peck*, 6 Cr. 87; *McCulloch* v. *Maryland*, 4 Wh. 316 . . . The fact is that the Constitution itself established the Supreme Court of the United States as the final tribunal for constitutional adjudication.

It is clear to me that the due process clause of the fifth amendment operates as a restraint on the manner in which Congress exercises its powers derived from article III as to modification of the jurisdiction of the Federal courts. Judicial review of constitutional issues must be Federal judicial review to be consistent with the national supremacy principle (Art. VI, cl. 2). In the case of *Cooper* v. *Aaron*, 358 U.S. 1, 18 (1958), a unanimous Court had this to say:

Article VI of the Constitution makes the Constitution the "supreme law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury* v. *Madison*, 1 Cranch. 137, 177, 2 L. Ed. 60, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our Constitutional system.

A further practical consideration was voiced by Charles Warren in his "Supreme Court in United States History," volume I, pages 27–28—1923, edition—and quoted with approval in the previously cited Bush decision. This consideration embraces the constitutional and legal chaos that would result from the withdrawal of final review from the Supreme Court. According to Charles Warren:

Changes . . . restricting the appellate jurisdiction of the Court . . . would result in having final decision of vastly important na-

tional questions in the State or inferior Federal Courts, and would effect a disastrous lack of uniformity in the construction of the Constitution, so that fundamental rights might vary in different parts of the country.

However, under the provisions of title II, not even the inferior Federal Courts would have the power to review State court decisions. The fundamental rights to which Mr. Warren refers could be interpreted by 50 autonomous jurisdictions in varying ways.

Last session hearings were held on a District of Columbia crime which less than 5 months ago passed this same Congress and became law. The Mallory and Miranda decisions were considered during the course of those hearings. I fail to understand why suddenly I find myself faced with a bill that would abrogate congressional action taken in this same area last winter. As each of us votes today, I suggest we ask ourselves whether title II of this bill is more of a reaction to the recent riots than to Supreme Court decisions.

The editors of the University of Pittsburgh Law Review—V. 29 at page 65—in October examined the Wade case and the two related cases, *Gilbert* v. *California*, 388 U.S. 263 and *Stovall* v. *Denno*, 388 U.S. 293, in an article entitled "Right to Counsel at Police Identification Proceedings: A Problem in Effective Implementation of an Expanding Constitution."

In meeting the problems created by what the editors term an "expanding constitution" the article describes what the Pittsburgh police department has done to implement this series of Supreme Court decisions. I commend the entire article to my colleagues concerned by the impact of these decisions on law enforcement and ask unanimous consent that the concluding two sections of the Law Review article and appendix I and II citing revised Pittsburgh police regulations be included as a part of my remarks at this point.

There being no objection, the two sections were ordered to be printed in the RECORD, as follows:

[From the University of Pittsburgh Law Review, vol. 29:65]

V. WADE IN PITTSBURGH

The *Wade* decision has stimulated a beneficial review of lineup procedures by the Pittsburgh police in an effort to improve techniques and meet constitutional standards. Immediately following the decision, a waiver procedure was instituted and the Neighborhood Legal Services Association agreed, on an interim basis, to provide "substitute" counsel at lineups for suspects who did not execute a waiver, pending the development of a more permanent system.[1] On police initiative, a series of two meetings was held with the Chairman of the Trial Committee of the Allegheny County Bar Association and other concerned persons with the aim of establishing procedures meeting the requirements of the *Wade* ruling. Emphasis was given to the following three problem areas: police procedures at lineups, the role of counsel at lineups, and the providing of counsel at pre-arraignment lineups. At the second meeting between police and representatives of the Trial Committee, Neighborhood Legal Services Association and the Public Defender's office,[2] procedures for the conduct of lineups were agreed upon and guidelines for counsel attending lineups, together with a system providing for "substitute" counsel when necessary, were developed. Procedures established for the conduct of lineups by the Pittsburgh police, together with the writer's comments and suggestions, are listed in Appendix I. Suggested guidelines developed for the function of counsel at Pittsburgh lineups are set forth in Appendix II.

In the case of post-arraignment lineups the problem of conducting a proper identification is purely a logistical one, involving such factors as obtaining the release of the accused from detention in the county jail or otherwise arranging for his presence,[3] and setting a time for the lineup suitable and convenient for police, non-suspect participants, witnesses and counsel. No special system would seem to be required, nor, in the absence of unusual circumstances, should there be any need to conduct a post-arraignment lineup without presence of counsel.

Pre-arraignment lineups, where the suspect desires but cannot afford an attorney, or his own attorney cannot be present at the required time, present a different problem. Time available to police for investigation may be short, the need for an early identification proceeding may be pressing, and community resources may not permit formal appointment of counsel. Recognizing that the pre-arraignment lineup is an important investigative tool,[4] and, when properly conducted, equally essential to the interest of the suspect,[5] the Bar Association Trial Committee has provided Pittsburgh police with a list of twelve volunteers, all experienced defense attorneys, who have agreed to make themselves available as "substitute" counsel when their assistance is required.[6] If the suspect is identified, and the volunteer does not continue to represent him, the volunteer will transmit his observations of the lineup to the attorney later retained or appointed.[7] It is submitted that this arrangement adequately meets the requirements of the *Wade* decision.

VI. OTHER SOLUTIONS

The Pittsburgh experience is an instructive example of constitutional implementation at the community level. While it remains to be seen whether the system developed will prove adequate as a permanent arrangement, the cooperative endeavor of the Pittsburgh police and the Bar Association seems to have produced a solution which meets the constitutional requirements of the *Wade* decision, and which should lead to the end result anticipated by the Court: that of improved reliability of eyewitness identification. At the same time, any potential detrimental effect on police investigative capabilities has been minimized.

In the face of the paucity of guidance provided by the Court, it is submitted that the Pittsburgh solution correctly interprets the role of counsel at the lineup as a limited one, thus eliminating the bane of the overly aggressive counsel feared by Mr. Justice White.[8] The use of the Court's suggestion that "the presence of substitute counsel might . . . suffice where notification and presence of the suspect's own counsel would result in prejudicial delay,"[9] effectively deals with any threat to the utility of the pre-arraignment lineup.

While the Pittsburgh experience provides one method of meeting the problems posed by *Wade*, other solutions may be desirable in other types of communities. In rural areas or small towns, where the use of identification procedures are infrequent and usually involve confrontations rather than lineups, no formal procedures may be necessary. On the other hand, because the suggestion involved in the confrontation process is patent and the procedure stark, requiring only the question, "Is this the man?", a simple directive enjoining police from oral suggestion and the verbatim notation of what is said may be Constitutionally sufficient where the need for identification is pressing and counsel is not available.[10] If the community is reluctant to develop regulations in the absence of additional Court guidance, and yet finds it too difficult to provide for counsel at identifications, the use of court-appointed lawyers on a rotating basis to actually supervise and control identification proceedings, with a

[1] The current personnel and resources available to the Public Defender's office were deemed insufficient to provide for appointment of counsel for indigent suspects at pre-arraignment lineups. It was felt that any commitment to provide Public Defender counsel at lineups conducted by the Pittsburgh Police could not be undertaken without becoming equally obligated to provide counsel at pre-arraignment proceedings held in all other boroughs, municipalities and townships throughout Allegheny County. Interview with Mr. George Ross, Allegheny County Public Defender, in Pittsburgh, Sept. 12, 1967.

[2] The writer was also in attendance through the courtesy of Assistant Superintendent Eugene L. Coon, Pittsburgh Bureau of Police.

[3] If the accused is released on bail, it would seem that the police cannot compel him to appear for a lineup without an appropriate order by the court or a magistrate. Such an order should be no more difficult to obtain than one securing the release of a suspect from detention for lineup purposes. Further, most counsel would probably advise their client to appear voluntarily on police request.

[4] Potential detriment to the utility of the pre-arraignment lineup through difficulties in obtaining counsel's presence may not be as severe as anticipated. Since *Wade*, 22 out of 34 suspects in Pittsburgh Robbery Squad lineups have waived their right to the presence of counsel. It is likely, however, that many of those waiving did so because they were innocent (17 of the 22 were not identified) and thus felt no need for counsel's assistance.

[5] Of 34 suspects placed in Pittsburgh Robbery Squad lineups since *Wade*, only 10 were identified as the criminal. Nearly all of those who were not identified were immediately released, unless they were concurrently being held on charges not relevant to the lineups.

[6] Whether or not substitute counsel would meet the constitutional requirements of the *Wade* decision undoubtedly depends on the characteristics of the system by which they are provided. *See* 388 U.S. at 237.

[7] The volunteer, of course, may also be available as a witness, if required. However, if transcripts are made or the proceedings otherwise adequately recorded, this would probably be unnecessary.

[8] 388 U.S. at 256–59.

[9] 388 U.S. at 237.

[10] In *Stovall*, the Court rejected petitioner's claim that forcing him to confront the critically wounded victim in her hospital room while handcuffed to a police officer was so prejudicial and suggestive that admission of the identification testimony at trial violated due process of law. The Court, while noting that confrontation "has been widely condemned," stressed the facts that the victim's recovery was in doubt, and that a lineup was not practicable, and held that, considering the "totality of the circumstances," the exclusion of the evidence was not required. 388 U.S. at 302. The question is apparently still open whether a confrontation in the absence of exigent circumstances would be a violation of due process even if counsel were present. It is clear that the Court greatly disfavors the use of the confrontation for identification purposes. *See* 388 U.S. at 234. However, the difficulty of holding a lineup in a small town may well permit the use of confrontations without violating due process.

function analogous to a magistrate [11] rather than a defense counsel, may be considered. Such a proceeding would probably be constitutionally sufficient, provided an adequate record is kept. Another approach might involve the expansion of the Public Defender system to insure counsel's presence at lineups.[12] Probably the most practical solution for most communities, however, would be a system similar to that of Pittsburgh, endeavoring to provide counsel if at all possible, but concurrently developing rules of prevention and preservation with full record of proceedings being mandatory if counsel is not present.[13]

PETER O. MUELLER.

APPENDIX I

(NOTE.—The following are Pittsburgh Police regulations, dated August 11, 1967, governing the conduct of lineups by Pittsburgh detectives. The writer's comments and suggestions appear in parentheses following the rule to which they are pertinent.)

1. The suspect (s) will be advised of the right to [have] counsel present during the standup [lineup], as prescribed by the Wade Decision. A reasonable delay pending the arrival of counsel will be afforded. The Waiver Form will be executed in the manner prescribed.

(The suspect should be further advised that if he is identified, the fact of such identification may be used against him in court, and such a warning should be incorporated in the Waiver Form. This rule should also provide that, should counsel fail to arrive within a reasonable time, a complete transcript of the proceedings *must* be made. The regular stenographic or tape recording of lineup proceedings would seem desirable even if counesl is present.)

2. The suspect (s) will not be placed in a standup unless there are a minimum of four other individuals with him. Exception will be if it is physically impossible to do so.

3. Every effort will be made to place persons of the same approximate age, height and weight in the standup.

(The phrase, "and general physical appearance," should be incorporated here to cover such qualities as complexion and racial characteristics.)

4. If persons meeting the above qualifications are not available the standup will be postponed until reasonably similar persons can be found. Exception will be if circumstances require an immediate standup.

(There would seem to be little purpose in putting a suspect in with dissimilar persons. It may, however, be slightly better than a simple confrontation by the witness, depending on the degree to which attention tends to be focused on the suspect. Thus, if police are satisfied that there is a risk that the identification evidence will be lost altogether, they may hold a lineup regardless of the fact that satisfactory nonsuspects are unavailable, while recognizing that the credibility of the identification evidence will be weakened.)

5. The suspect(s) will be provided the opportunity to select the place number which he desires for the standup. Subject's counsel, if present, should witness this choosing of the number. Counsel will then be shown to the main standup room to witness the proceedings.

(For the guidance of the officer conducting the lineup, a statement should be incorporated here to the effect that reasonable suggestions by counsel to improve the lineup are not improper. Any action to be taken on such suggestions must, of course, be left to the discretion of the officer.)

6. During the conduct of the standup, the names of the individuals will not be asked. A recitation of words used during the commission of the crime may be asked of all persons in the standup but each individual must be asked to repeat the words the same number of times. No questions should be asked which would in any way prejudice the rights of the suspect and possibly give a hint to the witness as to the identity of the suspect.

(Examples of such prejudicial questions might be whether or not the participants are employed, the extent of their education, the area of their residence, etc.)

7. When the witness has stated that the offender had an extremely distinctive voice (i.e., heavy lisp, hoarse whisper, etc.) and the suspect's voice fits this description, two standups must be held. The first standup will be held in the dark, the witness being asked to make an identification on the voice alone. During the second standup, held with the lights on, the witness will be asked to make an identification on the combination of voice and physical appearance. Participants in the second standup will be placed in a different order and given different numbers than in the first.

(This provision is a compromise resulting from the desire of the representatives of the Bar Association that voice and sight identifications be wholly separated to provide an additional check on the witness. Police objected that this would remove a material characteristic, the configuration of the suspect's features during speech, from the identification process.* It is submitted that the compromise is probably less fair than either of the original proposals, due to the suggestion created if one of the voices heard in the dark sounds familiar to the witness. Since no requirement for separate voice and sight identification is implied in *Wade*, the most reasonable solution would be simply to hold one lineup involving both voice and sight identification as is general practice elsewhere.)

8. The suspect will not be asked to wear clothing similar to that worn when the crime was committed unless he is apprehended shortly after the crime and is wearing the clothing described. Clothing seized from the suspect's home, not being worn at the time of the arrest, will not be put on the suspect for the standup.

(Suggestions as to clothing outlined in section IV *supra*, p. 8, should be here incorporated. Funds should be made available for the purchase of shirts. Sunglasses are presently kept on hand by Pittsburgh police.)

9. If clothing is removed from suspect for evidence purposes and coveralls issued, each individual in the standup must wear coveralls.

(The use of coveralls in other situations is not desirable, since it is probably detrimental to the recognition process.)

10. Suspect's counsel shall have every opportunity to view the entire proceedings but he will not be permitted to interview witnesses nor in any way interfere with the procedures herein outlined. Counsel will be treated with every courtesy and consideration in accordance with the rules and regulations of the Bureau of Police.

11. The revised standup form will be used.

12. If identification is made by witnesses, a photo of the entire standup in viewed sequence will be taken by the Photo Lab.

13. A record of questions asked during a standup is to be made, verbatim, and will be part of the files.

14. Each member of this Branch will do his utmost to insure that standups are conducted in a fair and impartial atmosphere to insure the Constitutional Rights guaranteed the suspect.

APPENDIX II—GUIDELINES DEVELOPED BY THE ALLEGHENY COUNTY BAR ASSOCIATION AND THE PITTSBURGH POLICE.

FUNCTION OF COUNSEL DURING POLICE STANDUP

1. The function of counsel during the police standup is chiefly that of an observer. The attorney will be permitted to observe all stages of the proceeding up to and including the standup. He will be permitted to position himself during the standup in such a way as to be able to ascertain whether the police officer (s) in charge of the proceedings or any other police officer (s) act to influence the witness in any way.

2. The attorney will be permitted to talk with his client either before or after the standup, if he so desires. However, the standup will not be unreasonably delayed by lengthy attorney-client conferences.

3. The attorney will be permitted to observe the taking of the photograph of the standup.

4. The attorney will not be permitted to talk to the witness at any time during the proceedings.

5. The attorney may make any reasonable suggestion to insure that the standup is conducted in the fairest way possible to his client.

6. The attorney will not interfere with the proceeding in any way. All efforts will be made to have a stenographer present during the standup to make a transcript of the proceeding and to record any objection offered by the attorney. If for some reason it is impossible to obtain a stenographer the attorney will be asked to note his own objections.

Mr. METCALF. Mr. President, it would seem that such recognition of these basic rights by police forces is a more constructive approach than abortive and ineffectual attempts to roll back the U.S. Constitution.

Mr. LONG of Missouri. Mr. President, recently I received a letter from Judge Robert Seiler, of the Missouri Supreme Court, relative to S. 917, the safe streets bill. Judge Seiler speaks in the letter as a private citizen, not as a supreme court judge. However, he speaks with experience. His comments are most relevant and persuasive.

Mr. President, I ask unanimous consent that Judge Seiler's letter be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SUPREME COURT OF MISSOURI,
Jefferson City, Mo., May 3, 1968.

HON. EDWARD LONG,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR LONG: I have been reading about the Safe Streets and Crime Control Act of 1968 which is before the Senate. What I read about the proposed restric-

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[11] The use of magistrates themselves for this function might be open to criticism, considering their close association with the police in many areas of the country.

[12] *See generally*, Note, *The Public Defender Act of 1967—A Proposed Pennsylvania Statute for Implementing the Sixth Amendment Right to Counsel*, 28 U. PITT. L. REV. 686 (1967), discussing the proposed Pennsylvania Public Defender Act and recommending its amendment to provide for the appointment of counsel in interrogation situations in response to *Escobedo* and *Miranda*. *Id.* at 691.

[13] This is the major weakness currently evident in Pittsburgh's lineup procedures. *See* app. I *infra*. If counsel is not available and police must hold a lineup, the proceedings must be fully recorded pursuant to regulations which so require, if the identifications are to escape the *Wade* exclusionary rule.

*This contention is psychologically sound. SEE H. BURTT, APPLIED PSYCHOLOGY 303 (1948), on the constellation principle of the memory process.

tions on the United States Supreme Court alarms me.

It seems to me it would be a great mistake to try to reverse by legislation, the Supreme Court decisions in the Miranda, Mallory, and Wade cases. These decisions do no more than to require the police to observe Bill of Rights safeguards in interrogating suspects and in displaying them in line-ups.

In my opinion, it's ridiculous to blame the crime rate on these decisions of the United States Supreme Court. These decisions have been in effect only the last couple of years or so, but the crime rate has been growing for years. It certainly is not due to these decisions.

For years we have had a general policy in this country of heavy punishment and severe retribution for offenders, yet the rate of recidivism has been 70% or more for a long time. I think it is obvious that the policy we have been following in this country for the last 50 years has not been a success in reducing crime or preventing its repetition.

In my opinion, the situation is not going to improve until a genuine and deep-seated respect for law and order is ingrained in people generally. I think respect for law and order suffers greatly every time the police deprive someone of his constitutional rights. Once the idea is firmly established that constitutional rights are going to be respected, then I think respect for law and order will gain thereby, and eventually we will be able to re-establish the respect for law and order, without which we cannot possibly reverse the increasing crime rate.

As an interested citizen, therefore, it is my hope that you will oppose that portion of the Act which would make voluntariness the only criteria as to admissibility of a confession and related portions of the Act attempting to abolish Supreme Court jurisdiction to review state confession cases and also attempting to abolish the authority of the federal courts to review states' criminal convictions by habeas corpus.

Also, again as a private citizen, I would urge restriction of sale of rifles and shotguns. The argument is made, as I am sure you have heard, that guns do not kill people—that it's people that kill people, but it must be admitted that at 200 yards, a rifle is a great help.

Finally, again as a private citizen, I am very skeptical of the advisability of enlarging the use of wire tapping. In theory, it is necessary in some instances, but in practice it is likely to be abused and, further, I see no way to avoid its abuse so far as the person on the other end of the line is concerned and whose private conversations are overheard just as much as the suspect's. I would, therefore, also urge you to vote against this aspect of the proposed legislation.

With best personal regards, I am,

Sincerely,

ROBERT E. SEILER.

TITLE III

Mr. LONG of Missouri. Mr. President, title III of the safe streets bill would destroy what little privacy we still are able to enjoy. Claims are made that the provisions of title III conform with the requirements set out by the Supreme Court in the Berger and Katz cases. In my opinion, this is not the case. I believe this measure would be an open invitation to law-enforcement officers to tap and bug whenever they felt like it. The controls contained in title III are mostly window-dressing.

Mr. President, radio station KMOX, St. Louis, recently broadcast an editorial calling for the defeat of title III. I ask unanimous consent that the transcript of the editorial be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE RIGHT OF PRIVACY

(Broadcast May 13, 1968, 10:10 p.m.)

Senator Long of Missouri is continuing his courageous and consistent battle to preserve our right of privacy.

The Senator is urging the Senate to kill a provision of the pending crime control bill that would allow court-ordered electronic eavesdropping.

Senator Long has an uphill battle on his hands . . . but it is a battle worth fighting. In a period when crime is on the increase, there is a growing demand that law enforcement officers be given a free hand to use every tool available to trap wrong-doers.

One of these tools, of course, is electronic bugging. This weekend in Hershey, Pennsylvania, the National Association of Attorneys General approved a resolution advocating wire-tapping . . . as each state deems appropriate.

This is just the sort of action that alarms Senator Long. "Each generation," he says, "seems to believe that the dangers of crime, subversion and espionage are greater than ever. As a result, there are always those who seek to justify the abandonment or limitation of some constitutional rights. The right of privacy is a frequent target."

We agree with Senator Long.

It is unthinkable to contemplate an America in which one's home or office could be bugged . . . in which private conversations could be recorded . . . merely on the suspicion of wrong-doing.

Electronic bugging is already a problem in regard to protecting business and technical secrets. Unrestricted use of "bugging" would be an Orwellian nightmare.

We urge Senator Long to continue his battle to protect our right of individual privacy.

Mr. LONG of Missouri. Mr. President, the St. Louis Post-Dispatch recently published an outstanding series of articles on privacy, or, more accurately, on the lack of it. The series by William F. Woo clearly presented the principal issue which faces us in our consideration of title III of the safe streets bill.

The Post-Dispatch has summed up the matter in a most effective editorial in which it calls for the defeat of title III.

Mr. President, I ask unanimous consent that the editorial be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

LIFE IN A GOLDFISH BOWL

The series of articles by William F. Woo may suggest to many that privacy is dead in America. If it is not, the pending Senate anticrime bill should furnish a coup of grace.

Mr. Woo's examination shows how easy it is to snoop on others, and how prevalent snooping is. Electronic gear for wiretapping and other forms of eavesdropping is available and cheap. Add to this credit bureaus with millions of records and bursting government files on citizens, and there seems to be very little that cannot be discovered about any one.

What the individual citizens can do in the way of snooping is, of course, surpassed by what the private detective and private industry can and do, and these in turn are surpassed by law enforcement agencies where, unfortunately, the Federal Government has led the way and set the tone. Despite the clear prohibitions of the Communications Act and Supreme Court rulings, federal agents of one sort or another were long busily engaged in bugging and ear-tending.

Today, however, the Justice Department itself, originally a leading transgressor, is opposed to extending electronic eavesdropping any further, as the Senate crime bill would do. The department suggests that eavesdropping be limited to national security cases under court order. The Senate bill is so broadly worded that it would permit both federal and state agents to eavesdrop for almost any purpose, under court order, which is hardly any safeguard to those whose minds and words (rather than houses) would be searched.

Any similarity between the old-fashioned constitutional idea of a search warrant and the Senate proposal breaks down with the latter's lack of specificity. As Mr. Woo points out, the Founding Fathers wrote four Amendments to the Constitution to guarantee the right of privacy, but what they had in mind was the prevention of torture and inquisition and the search in the dark; they could not foresee the modern techniques for satisfying official and unofficial snoopers and inquisitors.

Instead of returning the nation to the philosophy of the framers of the Constitution, the Senate bill would advance it toward the ideas of a police state, and remove what little protection of privacy there is left. The Senate should kill such provisions in the crime bill. The right of privacy is in more than enough danger without them.

TITLE II

Mr. McINTYRE. Mr. President, title II of the Omnibus Crime Control and Safe Streets Act, now pending before the Senate, relates to the rights of an accused in a criminal prosecution and the appellate jurisdiction of Federal courts. There are four main sections in this title, relating to confessions, eyewitness testimony, Federal court review powers, and habeas corpus jurisdiction; each of the sections is subject to serious constitutional and policy objections.

Essentially, the four main provisions are as follows:

First. Confessions: Sections 3501 (a) and (b) make voluntariness the sole criterion of admissibility of confessions in evidence in Federal courts, whether or not the defendant was advised of his right to silence or counsel. This provision would overrule the Supreme Court's decision in *Miranda* v. *Arizona* (834 U.S. 436—1966), whereby the Court established a constitutional requirement for specific warnings to be given an accused, above and beyond the traditional test of voluntariness. Section 3501(c) also provides that a confession shall not be inadmissible in a Federal court solely because of any delay between the arrest and arraignment of the defendant, thus overruling the Supreme Court's decision in *Mallory* v. *United States* (354 U.S. 449—1957), condemning prolonged and indefinite incarceration and interrogation of suspects, without opportunity to consult with friends, family, or counsel.

Second. Eyewitness testimony: Section 3503 of title II makes eyewitness testimony that a defendant participated in a crime admissible in evidence in a Federal court, whether or not the defendant was previously identified at a lineup in the absence of counsel. This provision would overrule the Supreme Court's decision in *United States* v. *Wade*

(388 U.S. 218—1967), which held that a lineup is a critical stage of criminal prosecution during which an accused is constitutionally entitled to the assistance of counsel.

Third. Federal court review: Section 3502 abolishes the jurisdiction of the Supreme Court and other Federal courts to review a State court determination admitting a confession in evidence as voluntarily made. As noted above, section 3503 also removes the jurisdiction of the Supreme Court and other Federal courts to review either a State or a Federal court determination admitting eyewitness testimony in evidence. These provisions raise serious constitutional questions because they prohibit Federal review of decisions by State courts, even though the State court has squarely passed upon a Federal claim. Moreover, abolishing Supreme Court review would leave the 50 State courts and 94 Federal district courts as the final arbiters of the meaning of the Constitution and laws of the United States.

Fourth. Habeas corpus jurisdiction: Section 2256 of title II abolishes the habeas corpus jurisdiction of the Federal courts over State criminal convictions. It limits Federal review of Federal claims by State prisoners to appeal or certiorari. This section operates as a suspension of the "great writ," which is prohibited by the Constitution except in cases of rebellion or invasion. In view of the fact that the remedies of appeal and certiorari are almost entirely discretionary in the Supreme Court, they cannot adequately protect Federal constitutional rights; due to the very number of cases involved, many State prisoners would be denied even one full and fair hearing in a Federal court on their constitutional claims. It is certainly true that numerous cases, long before the Supreme Court's decision in the Miranda case, demonstrate that total reliance on State court judges to protect Federal constitutional rights does not always fully serve to insure these rights.

I am directly opposed to the efforts to limit Federal court review powers and to restrict habeas corpus jurisdiction. In the area of confessions, I have been alarmed by the far-reaching applications of legal criteria made by the Supreme Court in determining the admissibility of confessions as evidence in criminal cases; I believe, as do many others, that the Miranda and Mallory rules have been carried too far by the courts. I would emphasize, however, that the Miranda and Mallory rules are basically sound rules. Through them, the Supreme Court made clear its intention to assure that an accused is properly apprised of his rights, and to prevent law-enforcement officers from delaying preliminary hearings for the purpose of eliciting confessions. The problem lies not with these principles but rather with the extension of these rules by the High Court.

As a member of the Committee on the District of Columbia during the 89th Congress, I joined in the majority view of the committee report which recommended certain changes and amendments to the District of Columbia Criminal Code, including criminal procedures, to provide for more effective law enforcement in the Nation's Capital within constitutional bounds. It was apparent to the committee at that time that in a number of cases in the District of Columbia the "unnecessary delay" criterion of the Mallory rule had been interpreted and applied to such an extent as to make it virtually impossible for investigating officers to speak with arrested persons with any assurance that resultant confessions would be acceptable in the courtroom. Thus law-enforcement officers were effectively being denied the essential investigative tool of in-custody interrogation. In order to provide procedures which would at once permit reasonable police interrogation of suspects while fully protecting their constitutional rights, a 3-hour aggregate time period was recommended by the committee and eventually accepted by the Congress as the limit for questioning an arrested person during an investigation following arrest and prior to appearance of the accused before a magistrate. Thus law-enforcement officers and judges were provided a workable rule of thumb by which oppressive practices could be avoided, both as a matter of policy and within proper constitutional limits.

The standard and safeguard described above seems to track very well with the subsequent opinion of the Supreme Court in the Miranda case, wherein the Court invited legislatures to adopt effective guidelines to protect suspects in the free exercise of their constitutional rights. The Court said:

> Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described (in the Court's holding) in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it.

This invitation to legislate is no justification for the provisions now found in title II, however, which provide substantially less than the required safeguards, and which serve instead substantially to curtail Federal rights. That any safeguard which is established must be fully effective in protecting the rights of the accused was made clear by the Supreme Court in the concluding words of the Miranda opinion when the Court said:

> Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

Taking all these factors into consideration, I have concluded that title II should not be enacted into law since it raises serious constitutional questions and dangerously affect the delicate balance-of-power concept so essential to our form of government.

Last week the Senate was informed by the distinguished senior Senator from North Carolina that beginning in mid-June the Subcommittee on Separation of Powers will hold a series of hearings on the role of the Supreme Court. Extensive discussions are planned with a number of distinguished constitutional law professors, historians, and students of political science. It is my hope that the subcommittee's study of the work of the Court will provide the Senate with a good information base for consideration of possible future legislation in this area.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the following bills of the Senate:

S. 126. An act for the relief of Pedro Antonio Julio Sanchez;

S. 233. An act for the relief of Chester E. Davis;

S. 1040. An act for the relief of certain employees of the Department of the Navy; and

S. 2409. An act for the relief of the estate of Josiah K. Lilly.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. McCLELLAN. Mr. President, what does the vote recur on now?

The VICE PRESIDENT. The amendment of the Senator from Michigan [Mr. HART] (No. 803) in the nature of a substitute for title II.

Mr. McCLELLAN. I thank the Chair.

Mr. HART. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Michigan will state it.

Mr. HART. What is the agreement with respect to time on the amendment that now recurs?

The VICE PRESIDENT. One hour. Thirty minutes to a side.

Mr. HART. Is the amendment now before the Senate?

The VICE PRESIDENT. That amendment is now the pending question.

Mr. HART. I thank the Chair.

Mr. President——

The VICE PRESIDENT. How much time does the Senator yield himself?

Mr. HART. Five minutes.

The VICE PRESIDENT. The Senator from Michigan is recognized for 5 minutes.

Mr. HOLLAND. Mr. President, I ask that the amendment be stated. Many Senators have not been able to be here for all the debate.

The VICE PRESIDENT. The amendment will be stated.

The LEGISLATIVE CLERK. On page 43, beginning with line 9, strike out through the matter preceding line 3 on page 48 and insert in lieu thereof the following:

TITLE II—INVESTIGATION ON LAW ENFORCEMENT IMPACT OF COURT DECISIONS REGARDING CRIMINAL LAW PROCEDURE

The Congress finds that extensive factual investigation of the actual impact on law enforcement of the decisions of the United States Supreme Court regarding criminal law procedure is a necessary prerequisite to legislative action pertaining to such decisions. The Congress therefore directs that the appropriate committee or committees of the Congress undertake such investigation of court decisions before the Congress considers legislative action regarding them.

Mr. HART. Mr. President, it would be folly for me to suggest that the reason the vote disappointed some of us was that the point at issue had not been clarified. It would also be folly for me to suggest that in the 30 minutes which would be available to me I could persuade a sufficient number of Senators to review their position and shift it.

I do regret the action that we have just taken, of course.

Mr. STENNIS. Mr. President, a point of order. I make the point of order that the Senate is out of order. This is a highly important matter. The Senator is not only entitled to be heard, but we are also entitled to have a chance to hear him. I ask the Chair to get the Senate in order and keep it in order.

The VICE PRESIDENT. Senate attachés will please find a place in the rear of the Chamber. The Senate will come to order.

The Senator from Michigan may proceed.

Mr. HART. Mr. President, I want briefly to state again the reason the Senator from Maryland and I, and others, proposed a course which has now clearly been rejected.

Tomorrow's headlines will report our action in a certain fashion.

Historians will view it, I think, in an entirely different light. Let me place a brief note into the RECORD so that when they get around to writing history, rather than just tomorrow's reassurance to America that we are going to be tough on crime, it will become clear that the Senate made a tragic mistake today. History will tend to interpret today's Senate action in the form of a question:

Can America afford to extend the protection of the Bill of Rights to all Americans?

Mr. LAUSCHE. Mr. President, will the Senator from Michigan yield for a question? Where does the Bill of Rights give to the Supreme Court the right to take away from an individual those rights specifically and clearly set forth in the Constitution?

Mr. HART. Since I am in the process of withdrawing the amendment, I desire only to state very briefly my own point of view.

Mr. LAUSCHE. I withdraw the question.

Mr. HART. I should like to relieve everyone from the chore of being here, yet at the same time I want to make a statement for the RECORD.

Mr. LAUSCHE. I withdraw the question.

Mr. HART. The right to be told that the Constitution gives certain rights is, I think, involved here. I suspect that my children now know that if a man in blue puts an arm upon them, they do not have to say a word, that when they get to the station house they can call father and they can get a lawyer. They do not have to be cautioned about anything.

Why is that? Well, for one thing, they have had an education which includes that knowledge. They are not sensitive to the fact that their color may tend to change attitudes at the station house.

But there are many young men and women in this town, in Detroit, and elsewhere who, I suspect, have not had the benefit of either that kind of education, nor the comfort that comes with looking like almost everyone else at the station house.

It is to them, I think, that the caution the Court has told us the Constitution requires to be outlined, should be outlined.

It is, admittedly, an effort to extend rights which my children know they have to the children of parents who never took the time to explain it or were not even around to explain it to their children. I think that, in a sense, it could be said that, somehow or other, in our efforts to defend our personal freedoms, we have sort of trimmed freedom itself.

The PRESIDING OFFICER (Mr. YOUNG of Ohio in the chair). The time of the Senator from Michigan has expired.

Mr. HART. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 1 additional minute.

Mr. HART. I wish and I would hope that history's judgment will not be that today we said we cannot afford to extend the protections of the bill of rights to everyone within the framework that the Court in the recent past has suggested, in its judgment, they constitutionally are entitled to.

I know that others with deep sincerity and with very careful attention to the long debate have reached an entirely opposite conclusion.

Mr. GORE. Mr. President, will the Senator from Michigan yield?

Mr. HART. I yield.

Mr. GORE. I voted differently from the distinguished Senator from Michigan, but I think I could concur fully with the statement he has just made.

I did not interpret the issue as the Senator's statement would seem to imply. I say, in candor, although I have not said anything on this bill yet, that as one trained in the law, I could not conscientiously vote for title II as it is. I think there are some provisions in the title for which I might be able to vote and, after some changes, I should like to vote for them. I understood that the issue would be whether we would substitute a study, really a postponement, of coming to grips with the issue of whether we proceed to deal with title II in its several parts.

I desire to proceed but, since the Senator is making a statement for the RECORD, and for history, in case historians might, perchance, be interested in what the position of one Senator was, I am unable to support title II as it is but I want to support a portion of it perhaps as modifications. Therefore, I voted against what I understood was to be essentially a postponement.

Mr. HART. I thank the Senator from Tennessee.

Mr. President, as we approach this piece-by-piece judgment of the elements that make up title II, I want to suggest that the person who says that some of these decisions have handcuffed the police in a sense is speaking the truth.

That was the purpose of the Bill of Rights. That is what the Bill of Rights is all about. The Bill of Rights was adopted in order that power of government should not overreach rights of individuals who, absent that bill, are too weak to resist.

So as we go down, point by point, I am perfectly willing to acknowledge that restraints on government are established and imposed by each of these features that the Court has given its opinions on, but that of itself means nothing except as it is understood as just one more reflection of the kind of society we sought to establish for ourselves, one where, indeed, the thing called the Bill of Rights can, if you want to use an attractive expression, put handcuffs on government. If we really believe in the Bill of Rights, let us make sure, as we go down section by section of title II, that we do not uncuff the power, resistance to which no citizen could offer, and the consequences of such chipping away at the Bill of Rights could hurt us all.

The PRESIDING OFFICER. The Senate will be in order. The Chair observes attachés talking in the rear of the Chamber. The Chair has a list of the names of attachés furnished by some Senators. Those attachés who are talking to themselves over at the Chair's right are not assisting their Senators. The Chair directs the Assistant Sergeant at Arms to clear the aisle of all attachés except those who are on the list. If the Assistant Sergeant at Arms does not accomplish this, the Chair will send for the Sergeant at Arms.

Mr. McCLELLAN. Will the Chair read the list? I have not given any list.

The PRESIDING OFFICER. The Chair will read the list.

At the request of Senator MCCLELLAN, the following are permitted in the Senate Chamber:

William Paisley, G. Robert Blakey, W. Arnold Smith, James C. Wood, Jr., and Richard W. Velde.

Also a request was made by Senator SCOTT to grant Barton Hertzbach, of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, to be granted the privilege of the floor during the further consideration of the pending bill.

Having read those six names, if there are any other attachés that Senators desire to remain in the room, they will please send the names up to the clerk, and those attachés will be permitted to remain here.

Mr. McCLELLAN. Mr. President, the reason why I asked is that staff members who were serving on the committee were ordered to get out of the Chamber. I do not mind if all the attachés get out, but I do not like to see staff members who worked on the bill summarily ordered out of the Chamber when I am presenting the bill.

The PRESIDING OFFICER. The Chair wishes to advise the Senator from Arkansas that the present Presiding Officer did not order those particular attachés out of the Chamber, but the Chair will order them out if they persist in talking in the rear of the Chamber.

Mr. McCLELLAN. They cannot talk in here when they are not in here.

The PRESIDING OFFICER. Mr. Terry Segal is granted permission.

Mr. ALLOTT. Mr. President, I ask unanimous consent that my legislative assistant, Mr. Joseph Blake, be permitted to be on the floor.

Mr. PASTORE. Mr. President, I cannot hear the Senator. The Senator always has something important to say. May we hear him?

Mr. ALLOTT. I asked unanimous consent that Mr. Joseph Blake, my legislative assistant, be allowed the privilege of the Senate floor during the consideration of the bill.

Mr. PASTORE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PASTORE. Mr. President, I realize that once the attachés come in here, they have to keep quiet and maintain order, but if I want my administrative assistant to come on the floor, I do not have to ask anyone for permission.

The PRESIDING OFFICER. Of course not, but when he is on the floor the Senator ought to direct him to maintain order and quiet.

Mr. PASTORE. That is right. When he is in here, he has to keep quiet, but first he has to be here to be quiet, and I do not have to ask anybody's permission to let him come here.

The PRESIDING OFFICER. He has a right to be here, but the Chair wants every Senator to know that attachés must be in order.

Mr. PASTORE. With that statement I fully agree.

Mr. ALLOTT. Mr. President, I withdraw the request that my legislative assistant be allowed on the floor.

Mr. HART. Mr. President, I yield 2 minutes to the Senator from Maryland [Mr. TYDINGS].

Mr. TYDINGS. Mr. President, as I understand, the Senator from Michigan plans to withdraw the pending amendment. When he withdraws the amendment, then the question before the Senate is on the motion to strike. It is my further understanding that the distinguished Senator from Arkansas [Mr. *McCLELLAN*], when that motion to strike becomes the pending business, will then ask for a division.

My purpose in rising is to propound a unanimous-consent request that after the Senator from Arkansas has divided the motion to strike, 30 minutes be provided for debate on each section which he has divided, the time to be equally controlled by the Senator from Arkansas and myself. We may not need that much time.

Mr. McCLELLAN. Mr. President, reserving the right to object, I would like to ascertain what would be the parliamentary situation if a unanimous-consent request on the time was agreed to. Once this motion to strike is divided, it is subject to further amendment?

The PRESIDING OFFICER. The Chair states it is not subject to further amendment until after the motion to strike has been disposed of.

Mr. McCLELLAN. If I understand it correctly, if I agree to limited time, the issue will be voted up or down on the sections or parts of title II as it is divided, without amendment?

The PRESIDING OFFICER. That is correct. The Chair understands there will be no additional time for debate unless permission is given.

Mr. McCLELLAN. All I am trying to do is this. I am willing to enter into a unanimous-consent agreement with respect to what is now in the bill and what will be divided, subject to voting on separate parts of it. I am willing to agree to limited time on that—say 10 minutes to a side.

Mr. TYDINGS. Mr. President, I will amend my request to make it 20 minutes, 10 minutes to a side.

Mr. McCLELLAN. I would not want to agree to that and then have amendments come up that I am not familiar with and try to dispose of it in that period of time. If it is not subject to amendment, I am willing to agree to this unanimous-consent request. As I understand, however, it will be voted up or down, but thereafter amendments can be offered after this motion is finally disposed of. It will be subject to amendment.

The PRESIDING OFFICER. That is right.

Mr. McCLELLAN. But not pending to this motion.

The PRESIDING OFFICER. That is correct.

Mr. McCLELLAN. And at the conclusion of this motion, when we vote on the original motion to strike, after voting these up or down, there is no further time limit; we revert back to unlimited time.

The PRESIDING OFFICER. The Chair states that is correct except as to title IV. There is an agreement of 1 hour on each amendment.

Mr. McCLELLAN. Title IV has already been disposed of. This is not title IV.

The PRESIDING OFFICER. The Chair is advised it is still open to amendment.

Mr. McCLELLAN. Very well. I am not talking about that. I am talking about title II.

Mr. President, with the parliamentary replies I have received, upon that condition, I will agree to a limitation of time, 20 minutes, 10 minutes to each side, upon the withdrawing of the Hart amendment or substitute.

Several Senators addressed the Chair.

Mr. DIRKSEN. Mr. President, reserving the right to object, first let me make inquiry of the distinguished Senator from Michigan, is he prepared now to withdraw his amendment?

Mr. HART. I intend to do that in a moment.

Mr. DIRKSEN. My second inquiry is, are we to vote on four propositions in title II?

Mr. McCLELLAN. We will vote on about six.

Mr. DIRKSEN. Six; and 10 minutes on each side? That is another 2 hours.

Mr. McCLELLAN. We may not use it all. I may not need more than 2 or 3 minutes on some of them.

Mr. DIRKSEN. Has time been exhausted on the motion to strike title II?

The PRESIDING OFFICER. The Chair is advised that when the amendment of the Senator from Michigan is withdrawn, there will be no further time unless there is an additional agreement.

Mr. DIRKSEN. Mr. President, it seems to me that this matter has been discussed pro and con for such a long time, and now we are going to spend another couple of hours on the same proposition. I see no reason why we could not vote right now.

Mr. McCLELLAN. Mr. President, I would be willing to modify the request and make it 2 minutes on each side.

Mr. DIRKSEN. Well, it requires two to make that deal.

Mr. McCLELLAN. Of course, I can only speak for one.

Mr. DIRKSEN. If the Senator wishes to do that, I suggest that he ask unanimous consent, and I am ready to agree.

Mr. TYDINGS. Mr. President, reserving the right to object, all I am interested in is that each Senator have an opportunity to know what he is voting for. I do not think 10 minutes on a side is asking too much, to assure that Senators may know what they are voting on. We are not even certain, now, of how the Senator from Arkansas intends to divide.

Mr. HART. Mr. President, how much time remains on my speech

Mr. McCLELLAN. Mr. President, let us get unanimous consent. I am willing to agree to any amount of time anybody wants.

Several Senators addressed the Chair.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that on the six propositions involved in title II, which by agreement will be divided, and contingent upon withdrawal of the Hart amendment, 5 minutes be allocated to each side on each proposition.

The PRESIDING OFFICER. Is there objection?

Several Senators addressed the Chair.

Mr. LAUSCHE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LAUSCHE. The proposal of 5 minutes to the side will be applicable to the amendments pending, but not applicable to any amendments to the amendments that might be submitted?

The PRESIDING OFFICER. The Chair understands it will be applicable to each division of title II.

Mr. HART. Mr. President, reserving the right to object, I wonder if I could encourage the Senator from Arkansas to extend that to 10 minutes on each side.

Mr. McCLELLAN. I cannot extend it. The request was made by the Senator from Illinois.

Mr. HART. Ten minutes is not too long to discuss what we will do with the writ of habeas corpus.

Mr. DIRKSEN. Well, Mr. President, this debate is now in its fourth week.

Mr. HART. I know it is, but I think that 10 more minutes in the light of the difficult road that that writ has followed through history is not too much. Maybe it will not be used; but I have a sneaking suspicion that if it is not available, somewhere along the road, somebody is going to jump up and say, "Wait a minute, I did not understand what was happening."

Mr. DIRKSEN. Mr. President, I modify the request to increase the time on the so-called habeas corpus amendment to 20 minutes, 10 minutes to each side.

Mr. HART. Mr. President, I used the writ of habeas corpus as an example be-

cause it has some emotional appeal and validity; but there are some other things involved that the Supreme Court has told American citizens they have a right to. So let us spend at least 10 minutes on each of those.

Mr. DIRKSEN. The Senator can object if he wants to, but my unanimous-consent request stands.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Illinois?

Mr. GORE. I object.

Mr. PASTORE. Mr. President, reserving the right to object, I understand that as it stands now, we have no time at all, so why not take a half a loaf? If we do not take 5 minutes, we get nothing. I mean we have got to be a little practical and realistic about this matter.

Mr. HART. Mr. President, may I ask if there is objection to a controlled time of 20 minutes, 10 minutes to a side, on whatever divisions are proposed? Perhaps it will not be used but is it really too much to suggest 10 minutes to a side on each of these significant issues?

The PRESIDING OFFICER. Objection was heard. Will the Senator state his request again?

Mr. HART. I heard no objection to that. It was the author's suggestion or request that to the extent that title II is divided, after the motion to strike is pending, we have a debate of 20 minutes, 10 minutes to a side.

The PRESIDING OFFICER. Is there objection?

Mr. DIRKSEN. Mr. President, I offer a substitute for the motion, to make it 15 minutes, 7½ minutes on the side.

The PRESIDING OFFICER. Is there objection?

Mr. GORE. Mr. President, reserving the right to object, this is a unanimous-consent request and not subject to amendment except by the Senator proposing the request.

I voted against the Tydings amendment because I wish to consider severally the provisions of title II. I am not sure that 10 minutes is adequate. There should be some time. I do not wish to object to the Senator's request, if he thinks it is sufficient.

Mr. HART. Mr. President, this is one of these situations where, if you had it to do over again, you would not start it. It just struck me that if anybody does dig back into this RECORD, and see that we allowed ourselves only 5 minutes apiece to decide what we wanted to do with what the Court has told us the writ of habeas corpus is supposed to mean, it would look a little hasty. It was for that reason I suggested 20 minutes.

Mr. DIRKSEN. Mr. President, I still have the floor under the order of recognition.

Yielding to the gentle persuasion of my friend from Michigan, I ask unanimous consent that 20 minutes be allowed on each of the six proposals contained in title II, to be equally divided.

The PRESIDING OFFICER. Is there objection?

Mr. PASTORE. I congratulate all the parties concerned.

The PRESIDING OFFICER. The Chair hears no objection, and it is so ordered.

Mr. McCLELLAN. Mr. President, may I ask for the division now? Is that in order?

The PRESIDING OFFICER. It will be in order after the amendment of the Senator from Michigan is withdrawn.

Mr. HART. Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn. The question is now on the motion to strike title II.

Mr. McCLELLAN. Mr. President, before we go into a division of time, let us have this title divided.

Mr. MILLER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MILLER. May I ask whether or not there has been an order for the yeas and nays on each one of these divisions?

The PRESIDING OFFICER. The Chair advises the Senator from Iowa that there has not been such an order as yet.

Mr. McCLELLAN. We will ask for that when we get to it.

Mr. President, I ask for a division of title II, for the purposes of voting, as follows——

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend until order is restored.

Mr. McCLELLAN. I ask for the yeas and nays on each section of the division.

The yeas and nays were ordered.

Mr. McCLELLAN. Mr. President, I ask that the first division be from the beginning of title II line 9, on page 43, down to and including line 23 on page 44.

I ask that the next division begin with line 24 on page 44, subtitle (c), and extend down to subtitle (d) on page 45, which includes line 11 on that page.

I assume that the other matter will be noncontroversial. However, it will have to be voted on. I think it can be voted on yea and nay.

Another division is section (d) and (e), beginning on page 45, line 12 down to and including line 20 on page 45. That will be division No. 3.

Division No. 4 will be all of section 3502, beginning on line 21 of page 45 and extending to and including line 7 on page 46.

Division No. 5 will begin on page 46, line 8, and extend to and include line 2 on page 47.

Division No. 6 will begin with line 3 on page 47, section 702, and extend down to title III on page 48, which includes line 2 on that page.

Mr. President, are the divisions ordered?

The PRESIDING OFFICER. The divisions are ordered.

PRIVILEGE OF THE FLOOR

Mr. SCOTT. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. McCLELLAN. I yield.

Mr. SCOTT. Mr President, I ask unanimous consent that my legislative assistant Richard Murphy be granted the privilege of the floor during the remaining consideration of the pending bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

FIRST DIVISION

The clerk will now state the first division.

The ASSISTANT LEGISLATIVE CLERK. On page 43, beginning on line 9, strike the language down to and including line 23 on page 44.

The first division is as follows:

TITLE II—ADMISSIBILITY OF CONFESSIONS, REVIEWABILITY OF ADMISSION IN EVIDENCE OF CONFESSIONS IN STATE CASES, ADMISSIBILITY IN EVIDENCE OF EYE WITNESS TESTIMONY, AND PROCEDURES IN OBTAINING WRITS OF HABEAS CORPUS

SEC. 701. (a) Chapter 223, title 18, United States Code (relating to witnesses and evidence), is amended by adding at the end thereof the following new sections:

§ 3501. Admissibility of confessions

"(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

"(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

"The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession."

The PRESIDING OFFICER. There will be 10 minutes to the side.

The Senator from Arkansas is recognized.

Mr. McCLELLAN. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 1 minute.

Mr. McCLELLAN. Mr. President, this division has to do with the Miranda decision and says that the Miranda case shall be taken into consideration by the trial judge in determining whether a statement is voluntary and if he determines that the confession is voluntary, he then submits it to the jury and lets the jury hear the same testimony he has heard and instructs the jury to give it such weight as they think it is entitled to. He must find himself, out of the presence of the jury, that it was voluntarily made,

without coercion and without intimidation.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield 1 minute to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 1 minute.

Mr. LAUSCHE. Mr. President, does the Senator's statement embody what has been the law in the United States for more than 170 years?

Mr. McCLELLAN. The Senator is correct.

Mr. LAUSCHE. I refer to the fact that the judge hears the testimony, determines whether the confession is voluntary and in conformity with the Miranda pronouncements, and then also submits it to the jury to likewise make a determination as to whether it is voluntary?

Mr. McCLELLAN. The Senator is correct.

Mr. LAUSCHE. And that began in 1787?

Mr. McCLELLAN. The Senator is correct.

SEVERAL SENATORS. Vote. Vote.

The PRESIDING OFFICER. Who yields time?

The Senator from Maryland is recognized.

Mr. TYDINGS. Mr. President, the first division, as explained by the Senator from Arkansas does relate to the Miranda decision as I understand it. The Senator will correct me if I am wrong.

Division No. 1 is the Miranda decision.

Division No. 2 is the Mallory decision.

Division No. 3 is basically the definition which relates to Nos. 1 and 2.

I think the Senate is aware, after the debate, of the ramifications of section 3501. And I am prepared to vote.

SEVERAL SENATORS. Vote. Vote.

Mr. McCLELLAN. Mr. President, I yield back the remainder of my time.

Mr. TYDINGS. Mr. President, as I understand it, when all time is yielded back, the question before the Senate is division No. 1 of the motion to strike title II.

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLELLAN. A vote of "yea" would be a vote to strike it, and a vote of "nay" would be a vote to leave it in the bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. TYDINGS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to division No. 1 of the motion to strike the language beginning on line 9 of page 43, down to and including line 23 on page 44.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). On this vote, I have a pair with the distinguished Senator from Minnesota [Mr. McCARTHY]. If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withdraw my vote.

Mr. BREWSTER (when his name was called). On this vote, I have a pair with the Senator from New York [Mr. KENNEDY]. If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. McCARTHY], the Senator from Wyoming [Mr. McGEE], the Senator from South Dakota [Mr. McGOVERN], the Senator from Oklahoma [Mr. MONRONEY], and the Senator from New Mexico [Mr. MONTOYA] are necessarily absent.

The Senator from Wisconsin [Mr. NELSON] is absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING] and the Senator from Oklahoma [Mr. MONRONEY] would each vote "yea."

Mr. DIRKSEN. I announce that the Senator from Oregon [Mr. HATFIELD] and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

If present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

On this vote, the Senator from New York [Mr. JAVITS] is paired with the Senator from California [Mr. KUCHEL]. If present and voting, the Senator from New York would vote "yea" and the Senator from California would vote "nay."

The result was announced—yeas 29, nays 55, as follows:

[No. 141 Leg.]

YEAS—29

Boggs	Jackson	Pastore
Brooke	Kennedy, Mass.	Pell
Burdick	Long, Mo.	Percy
Case	Magnuson	Proxmire
Clark	McIntyre	Spong
Cooper	Metcalf	Symington
Fong	Mondale	Tydings
Hart	Morse	Williams, N.J.
Hartke	Morton	Young, Ohio
Inouye	Muskie	

NAYS—55

Aiken	Fannin	Murphy
Allott	Fulbright	Pearson
Anderson	Gore	Prouty
Baker	Griffin	Randolph
Bayh	Hansen	Ribicoff
Bennett	Hayden	Russell
Bible	Hickenlooper	Scott
Byrd, Va.	Hill	Smathers
Byrd, W. Va.	Holland	Smith
Cannon	Hollings	Sparkman
Carlson	Hruska	Stennis
Cotton	Jordan, N.C.	Talmadge
Curtis	Jordan, Idaho	Thurmond
Dirksen	Lausche	Tower
Dodd	Long, La.	Williams, Del.
Dominick	McClellan	Yarborough
Eastland	Miller	Young, N. Dak.
Ellender	Moss	
Ervin	Mundt	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Brewster, against. Mansfield, against.

NOT VOTING—14

Bartlett	Javits	McGovern
Church	Kennedy, N.Y.	Monroney
Gruening	Kuchel	Montoya
Harris	McCarthy	Nelson
Hatfield	McGee	

So the first division of the motion to strike title II was rejected.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. BAYH in the chair). The second division which has been requested starts with line 24 on page 44, to and including line 11 on page 45.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. McCLELLAN. Mr. President, the Senate has already voted on the Mallory rule, in the District of Columbia bill last year, a vote of approximately 2 to 1. The section now being considered reads:

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury.

In other words, under the section that has just been adopted, it requires the trial judge to take into account whether there is an unreasonable amount of time and whether that contribtued to coercion with respect to the confession. It puts all the facts, the totality of the circumstances, back in the trial court.

The Senate approved of this once, and I hope it does so again.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. LAUSCHE. Does it not go beyond that and also put it in the jury?

Mr. McCLELLAN. It does. It puts it right in the jury, where it has always been and where it belongs.

Mr. LAUSCHE. Mr. President, will the Senator yield for a question?

Mr. McCLELLAN. I yield.

Mr. LAUSCHE. That is, prior to the Mallory rule, confessions made under the circumstances described by the Senator were admissible in evidence?

Mr. McCLELLAN. That is correct.

If there is any doubt about whether it has had any impact, look at the chart and see how crime has spiraled upward since that rule went into effect.

Mr. LAUSCHE. The Mallory rule was adopted in 1955 or 1956?

Mr. McCLELLAN. In 1954, as I recall.

Mr. LAUSCHE. And the Mallory rule provided that the arresting officer must immediately——

Mr. McCLELLAN. Since then, they have held that a person cannot be given even 5 minutes, that that is an unreasonable time. My position is that if you arrest somebody on suspicion, you might have every ground to arrest him on suspicion. If you have to run him

straight to a magistrate, it is not even fair to the person arrested. With a little investigation, you might be able to find out that he is not guilty and you can turn him loose. It works both ways. He may be guilty, and you may take him to the magistrate, and you may not have time to inquire and get the proof.

But if they do not arrest him he may get away. What are they going to do then? Are they going to pick up somebody and take him down there without any evidence and hold him? Then, he would get an arrest record. That is what he would get. Whereas, a little investigation might turn the man loose. The law is for the protection of the accused as well as society.

Mr. LAUSCHE. Mr. President, will the Senator yield further?

Mr. McCLELLAN. I yield.

Mr. LAUSCHE. Under the proposal of the Senator from Arkansas, the arresting officer would be allowed to bring the arrested man before the court and the court would determine whether the time was unreasonable, and the jury——

Mr. McCLELLAN. It would be done at the trial. That is taken into account and it must be considered under the provisions we have already adopted.

Mr. TYDINGS. Mr. President, I wish to propound a question to the distinguished Senator from Arkansas.

As the Senator knows, the District of Columbia crime bill, which was adopted by the Senate and the House of Representatives last year, and which was enacted into law, placed a time limit on the so-called stop and frisk procedure of 3 hours.

The Senator from Pennsylvania [Mr. SCOTT] has an amendment to the entire title in which he would make the time 4 hours. His amendment would begin on line 9, on page 45, beginning with the word "is" and strike out all through the period on line 11 and insert the language: "was made or given by such person within four hours immediately following his arrest or other detention."

I wonder what the view of the Senator is with respect to that amendment.

Mr. McCLELLAN. I understand this measure is not open to amendment at this time. After final disposition of the motion to strike everything, it will be open for that kind of amendment. At that time I would be glad to consider it but I do not wish to make a commitment at this time. We will have the opportunity to vote for such a modification after this matter is disposed of.

Mr. TYDINGS. I might advise the Senate that language similar to the second division was contained in the District of Columbia crime bill a few years ago, which was vetoed by the President. It does upset a long series of cases, and not only the Mallory case, but going back to the McNabb case.

I hope the second division will be stricken from title II.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield.

Mr. PASTORE. The Escobedo case was a split decision, by a vote of 5 to 4; is that correct?

Mr. TYDINGS. I believe that is correct.

Mr. PASTORE. The Miranda case was a 5 to 4 decision; is that correct?

Mr. TYDINGS. The Senator is correct.

Mr. PASTORE. What was the vote in the Mallory decision?

Mr. TYDINGS. In the Mallory decision the vote was 8 to 0.

Mr. PASTORE. In other words, it is a unanimous decision of the Supreme Court, and we are asked here to destroy that unanimous decision.

Mr. LAUSCHE. In the Mallory decision was not a rule of court involved?

Mr. TYDINGS. The Mallory case arose under a construction of the Federal Rules of Civil Procedure which provide that a defendant must be brought before an arraigning officer, either a U.S. commissioner or a district judge, without unnecessary delay. The Mallory decision was supporting that provision "without unnecessary delay."

Mr. LAUSCHE. Who adopted the rule?

Mr. TYDINGS. The Judicial Conference of the United States.

Mr. LAUSCHE. It was not the Congress of the United States?

Mr. TYDINGS. No. It was the Judicial Conference of the United States.

Mr. LAUSCHE. The Judicial Conference said you must immediately and without delay bring the accused before the court?

Mr. TYDINGS. That he must be brought without unnecessary delay.

Mr. McCLELLAN. The rule that the Court interpreted stated "without unnecessary delay." The Court has interpreted "unnecessary delay" to mean forthwith and it does not permit what I have suggested here. This should be a reasonable time, and that is all this provision would do. To ascertain if the proof is sufficient to hold the man. Otherwise, criminals who are apprehended are going to be permitted to escape. In addition innocent people will be taken in without a sufficient opportunity to investigate whether or not they are innocent. They might be given an arrest record. We should not let this sort of thing happen. This measure would provide a reasonable time for making that determination.

Mr. METCALF. Mr. President, will the Senator yield for a question?

Mr. McCLELLAN. I yield.

Mr. METCALF. The Senator from Arkansas suggested that Congress last December changed the Mallory rule in the District of Columbia crime bill to provide for 3 hours, so that a person had to be brought before a magistrate within 3 hours.

Mr. McCLELLAN. Yes.

Mr. METCALF. The pending legislation would repeal that District of Columbia provision, would it not, and leave the matter up to the discretion of the judge, whether he is brought before it in 3 hours, 4 hours, 5 hours, or 6 hours?

Mr. McCLELLAN. I have not checked to see if this would repeal that language or not. If it does, it should be repealed and a reasonable time provided.

Mr. METCALF. Last December, after discussion and debate, we reached a compromise in connection with the Mallory case. Many people thought that compromise was going too far, but at least we provided that 3 hours would be a reasonable time to hold persons. Now, after only a few months we would repeal that provision of the District of Columbia crime bill. Is that not correct?

Mr. McCLELLAN. I do not believe this measure was meant to repeal the District of Columbia crime bill, but we can find out.

Mr. METCALF. The language makes reference to "any criminal prosecution brought by the United States or by the District of Columbia."

Mr. McCLELLAN. We tried to make it uniform.

Mr. METCALF. Does the Senator not think that the 3-hour provision might be——

Mr. McCLELLAN. I have not said 3 hours. The measure speaks for itself. If later a Senator wishes to offer an amendment, that can be done, but it cannot be done on this vote. The matter will be open for amendment.

A suggestion has been made for 6 hours. I said I would consider it, and I mean that in all good faith. There must be some modification of the rule because it is not fair now and it does an injustice.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. ERVIN. The Mallory rule was based on a rule of court which merely said an arresting officer would take a person without unnecessary delay.

Mr. McCLELLAN. Without unnecessary delay. As that has been interpreted it did not even mean 5 minutes, and that is wrong.

Mr. ERVIN. The Court took that rule and converted it into a rule of evidence when it was not a rule of evidence.

Mr. McCLELLAN. The Senator is correct.

Mr. ERVIN. This amendment does away with such artificial things as time and provides if the confession was voluntarily made.

Mr. McCLELLAN. The Senator is correct. I hope we have not lost complete confidence in the judges throughout this land.

I would think that any trial judge would be able to take into account the circumstances and determine whether there was delay in taking a person for arraignment and whether it was unreasonable or unjust. Therefore, the judge would be able to rule accordingly. I suppose the Supreme Court could review it. This condition we have today should be corrected, and we should be uniform throughout the Nation.

Mr. LAUSCHE. When the Court ruled that a man had to be immediately and without unnecessary delay brought before the court, did that also declare a rule of law applicable to county and State courts?

Mr. McCLELLAN. Yes. They are holding that now; and that applies throughout the land, in the States, counties, and everywhere else. Anybody who is taken into custody must be immediately taken into custody without unnecessary delay. Unnecessary delay has been interpreted in the Mallory rule to be immediately and it does not mean in 5 minutes.

The present situation is simply unreasonable. Here is an innocent fellow. A crime has been committed. They go out and they see someone who may be guilty. The fellow says that he was not there, that he just left somewhere else and came back.

He might be telling the truth about it, but if he is telling the truth about it, he should not be carried down there and an arrest made of him.

Mr. TYDINGS. Mr. President, in one word, the Mallory case was a case involving a defendant before the Federal court who had been held 14 hours incommunicado. The Court found, under Federal rules of criminal procedure, that that was an unnecessary delay. The Mallory decision applies only to cases in Federal courts, to Federal rules of criminal procedure, and does not apply to cases in State courts.

I hope that the section is struck.

Mr. COOPER. Mr. President, will the Senator from Maryland yield?

Mr. TYDINGS. I yield to the Senator from Kentucky whatever time I have remaining.

The PRESIDING OFFICER. The Senator from Kentucky may proceed.

Mr. COOPER. I thank the Senator from Maryland.

Mr. President, I remember in 1958, when I was serving in the Senate, that after the Mallory decision of 1957, the Senate Judiciary Committee reported amendments at that time to modify it. I remember participating in the debate. As I understand the holding of the Court, and I believe it has been correctly stated by the Senator from Maryland and the Senator from Arkansas, the Court gave it the effect of a rule and did not apply it as a constitutional principle.

In the Miranda and later cases, the Supreme Court has provided constitutional protection to an individual against self-incrimination under the fifth amendment, by prescribing that he must be warned that he does not have to make a statement, that any statement he makes may used against him, that he has the right to a lawyer, and if he does not have funds to secure one, that a lawyer will be provided.

The Court also declared in its opinion that the Mallory rule must be taken into account.

Under the Court rulings before the Mallory case, and under the amendment now proposed by the Senator from Arkansas, there would be no limit upon the time that a defendant could be detained to seek a confession before his arraignment before a magistrate. It is true that the jury, under instructions from the judge, would determine whether the length of time which he had been held affected the voluntariness of his statement. But since the Mallory case the courts have held that to hold a defendant under detention for an unreasonable length of time in itself would make his confession inadmissible, even if it were found to be voluntary. I believe that the Senator from Arkansas would agree with me, there is no prohibition in the amendment which he is offering against the detention of a defendant for any length of time when a confession is sought and obtained.

There is another fundamental principle involved in the Mallory case, even if the Court did not invoke it in its finding; it is, that in this country we do not detain an individual except under due process of law; otherwise, we would have a police state, where any officer, without arraignment or without securing a warrant, could simply say, "I have probable cause to believe that this man has committed a felony. I will take him in my possession and hold him for 3, 4, 10, or 12 hours while I attempt to obtain from him a confession or an admission."

Such a proposition goes fundamentally against the proposition that no individual in this country shall be detained against his will and until he has been taken before a magistrate and has been apprised of the offense with which he is charged. This, of course, contemplates a reasonable time to bring the accused before a magistrate, but certainly it does not mean an unlimited time.

I do not agree with the statement of my colleague, the Senator from Arkansas, that through detention it may be determined that the detained person has committed no crime, and can be turned loose. And therefore this justifies detention.

During his detention, he may have been held against his will, he may have been deprived of his liberty without due process of law.

I cannot vote for an amendment which would permit a defendant to be held an unlimited time in order to seek a confession. That is the reason I speak today.

Mr. McCLELLAN. Mr. President——

The PRESIDING OFFICER. The Chair is advised that the Senator's time has expired.

Mr. McCLELLAN. Very well. Let us vote.

Mr. TYDINGS. Mr. President, I am happy to yield the 2 minutes remaining to me to the Senator from Arkansas.

Mr. McCLELLAN. I thank the Senator from Maryland.

Mr. President, what are we going to say to a policeman, if that becomes the law of the land? Is it that we will not be able to arrest anyone until we get a warrant? If that be true, then there is no hope for safe streets in America. If police officers are not to be trusted to use their own discretion as to when to take a man into custody until they can ascertain whether there is sufficient evidence to take him before a magistrate, before a reasonable time has expired, then we will never have any more safe streets in America. The policeman will not want to run the risk of being sued for false arrest if he cannot have a little leeway to exercise that kind of judgment in taking a man into custody. Especially, if he was at the scene of the crime, or when he has evidence to detain a man and then must take him down before a magistrate right away and have him bound over or the case disposed of.

It would help and protect the innocent as well as the guilty.

That is what is wrong with law enforcement in America today, we place so many shackles on law enforcement officials that they cannot do their duty. They are afraid to do so. They also do not know what to do, sometimes, because they are so confused with all of these decisions and their consequences. ["Vote!"]

Mr. LAUSCHE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Ohio will state it.

Mr. LAUSCHE. To vote in accordance with the views of the Senator from Arkansas will be to vote no?

The PRESIDING OFFICER. The Senator is correct. A vote of nay will be a vote not to strike.

The yeas and nays have been ordered on the second division of the motion to strike title II.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MANSFIELD. Mr. President, on this vote I have a pair with the Senator from Minnesota [Mr. McCARTHY]. If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore I withhold my vote.

Mr. MORTON (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the minority leader, the Senator from Illinois [Mr. DIRKSEN]. If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. McCARTHY], the Senator from Wyoming [Mr. McGEE], the Senator from South Dakota [Mr. McGOVERN], and the Senator from New Mexico [Mr. MONTOYA] are necessarily absent.

The Senator from Wisconsin [Mr. NELSON] is absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING], and the Senator from New York [Mr. KENNEDY] would each vote "yea."

Mr. HICKENLOOPER. I announce that the Senator from Illinois [Mr. DIRKSEN], the Senator from Oregon [Mr. HATFIELD], and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

If present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

On this vote, the Senator from New York [Mr. JAVITS] is paired with the Senator from California [Mr. KUCHEL]. If present and voting, the Senator from New York would vote "yea" and the Senator from California would vote "nay."

The pair of the Senator from Illinois [Mr. DIRKSEN] has been previously announced.

The result was announced—yeas 26, nays 58, as follows:

[No. 142 Leg.]

YEAS—26

Brooke	Cooper	Inouye
Burdick	Fong	Jackson
Case	Hart	Kennedy, Mass.
Clark	Hartke	Long, Mo.

McIntyre	Moss	Tydings
Metcalf	Muskie	Williams, N.J.
Mondale	Pastore	Yarborough
Monroney	Pell	Young, Ohio
Morse	Proxmire	

NAYS—58

Aiken	Fannin	Pearson
Allott	Fulbright	Percy
Anderson	Gore	Prouty
Baker	Griffin	Randolph
Bayh	Hansen	Ribicoff
Bennett	Hayden	Russell
Bible	Hickenlooper	Scott
Boggs	Hill	Smathers
Brewster	Holland	Smith
Byrd, Va.	Hollings	Sparkman
Byrd, W. Va.	Hruska	Spong
Cannon	Jordan, N.C.	Stennis
Carlson	Jordan, Idaho	Symington
Cotton	Lausche	Talmadge
Curtis	Long, La.	Thurmond
Dodd	Magnuson	Tower
Dominick	McClellan	Williams, Del.
Eastland	Miller	Young, N. Dak.
Ellender	Mundt	
Ervin	Murphy	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Mansfield, against. Morton, for.

NOT VOTING—14

Bartlett	Hatfield	McGee
Church	Javits	McGovern
Dirksen	Kennedy, N.Y.	Montoya
Gruening	Kuchel	Nelson
Harris	McCarthy	

So the second division of the motion to strike was rejected.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the second division of the motion to strike was rejected.

Mr. BYRD of West Virginia. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, I now call up the division upon including line 12 through line 20 on page 45, and I say I do not think it is necessary to ask for a rollcall vote on this division. I do not think there will be any objection to it, if the other amendment is adopted, because it simply provides that—

Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

In other words, if no officer is involved—if I confess to you, for example—that would be considered voluntary. I see no objection to it.

The other part is the definition, and reads:

As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

I assume there is no objection to it.

Mr. President, I ask unanimous consent that the order for the yeas and nays be vacated and that the question be put on retaining lines 12 through 20 on page 45 of the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is on division No. 3 of the motion to strike.

The motion to strike was not agreed to, and the language, on page 45, lines 12 through 20, was retained, as follows:

"(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

"(e) As used in this section, the term 'confession' means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the third division of the motion to strike title II was rejected.

Mr. TALMADGE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, I yield the floor to the distinguished Senator from North Carolina, who is the author of the other provisions in this title, and I yield to him the right to control the time.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, I defer to the Senator from Maryland, who I believe has the laboring oar as the author of the motion to strike.

Mr. TYDINGS. Mr. President, division No. 4, section 3502, as to the reviewability of admission in evidence of confessions in State cases, would overrule constitutional law, and overrule the right of the Supreme Court of the United States to review decisions from State courts which it has had jurisdiction to review dating back to the inception of this Republic. Section 3502, Mr. President, would overrule Marbury against Madison. It would overrule McCulloch against Maryland. It would overrule Martins against Hunter's Lessee. It would prevent the Supreme Court of the United States or any inferior court of the Federal system from reviewing, reversing, vacating, modifying or disturbing in any way any ruling of any trial court of any State in any criminal prosecution admitting in evidence as voluntarily made an admission or confession of an accused, if such ruling has been affirmed or otherwise upheld by the highest court of the State having appellate jurisdiction of the cause.

In other words, Mr. President, when the fifth amendment right and privilege against self-incrimination is involved in an involuntary confession, if this section is adopted, we take away the right of the Supreme Court of the United States to review.

If the right of the Supreme Court of the United States to review can be taken away on a fifth amendment case, it can be taken away on a first amendment case. The first amendment is the guarantee of freedom of speech.

The fifth amendment or the first amendment, either one, in my judgment, should be fundamental in a democratic society such as our Republic. I think it would be a travesty, and yielding to the passion of the time, if the Senate were to yield to emotion and take away the right of review of a fifth amendment case involving an involuntary confession at this time, because of the circumstances we all know.

I yield 5 minutes to the Senator from Tennessee.

Mr. GORE. Mr. President, this is a section of title II to which I cannot lend my support. As I read it, it would eliminate altogether the jurisdiction of a Federal court to review, consider, alter, or modify in any respect the validity of a confession as utilized in the proceedings of a State court.

I submit, Mr. President, that this is approaching the problem from the standpoint of jurisdiction. The Senator from Maryland has said that it would deny certain rights and powers to the Supreme Court. It also denies to an American citizen the right to appeal to a Federal court the question of validity of confessions as utilized in a judgment which he thinks is unjust.

One of the first cases that all of us studied in law school was Marbury against Madison. This, I submit, is fundamental in our jurisprudence.

Moreover; this provision, if enacted into law, would attempt to give to the Federal courts only the right to review a case in part, eliminating entirely from the reviewability of the Federal courts the confession and the conditions under which the confession was obtained, so long as a State court, in its final appellate jurisdiction, had affirmed the validity of such evidence.

I submit, Mr. President, that this goes too far, and I cannot support it. Therefore, I shall vote to eliminate this section.

Mr. LAUSCHE. Mr. President, will the Senator yield for a question?

Mr. GORE. I yield.

Mr. LAUSCHE. If the measure presented in the issue before us gave the right to go to the Supreme Court on a petition for certiorari, as distinguished from a petition for habeas corpus, would the Senator support the measure?

What I have in mind is that the bill now before us provides that you can only go to the supreme court of the State. If it provided that you could go to the Supreme Court of the United States, as a direct proceeding from the trial court, as distinguished from a petition for a writ of habeas corpus, would the Senator support the bill?

Mr. GORE. I would certainly be willing to consider it. That, however, is not before the Senate. The question before the Senate is the elimination of section 3502, and that is the question upon which I am called to vote.

Mr. LAUSCHE. That is, that the decision of the supreme court of the State shall not be final?

Mr. GORE. I do not wish to deny to the Federal courts, nor do I wish to deny to an American citizen, the reviewability by the Federal courts of a constitutional right which he thinks may have been infringed.

The PRESIDING OFFICER. The time of the Senator from Tennessee has expired.

Mr. LAUSCHE. Mr. President, may I have 2 minutes?

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, if the Senate, after adopting the provisions of title II which have already been adopted, should vote to strike this provision, it

would do a very inconsistent thing. The Senate has just adopted three provisions—that is, it has refused to strike three provisions—and it has thereby made voluntary confessions admissible in Federal courts, even though the warnings in the Miranda case are not given.

Congress has no power to prescribe procedures in State courts; and this is the only way in which the Senate can restore to the State courts the power to convict, on voluntary confessions, self-confessed murderers, self-confessed rapists, self-confessed robbers, self-confessed burglars, self-confessed arsonists, and self-confessed thieves in cases where the newly invented rule in the Miranda case was not followed by the law-enforcement officer having them in custody.

All this measure seeks to do is to deny jurisdiction to the Supreme Court in one respect, and one respect only. It gives the accused 2 days in court. It gives him a day in the trial court, where he can contest the voluntariness of his confession and it gives him a day, in the highest court of the State having jurisdiction of his case to contest a second time the voluntariness of his confession. If the Senate should strike this provision, it would do the paradoxical thing of recognizing the admissibility of voluntary confession in Federal courts, but not in State courts. That would be the strange consequence of its former vote and a vote to strike this provision.

The Senate should remember that it is the States which have the primary power and the primary duty to enforce the great bulk of the criminal laws which protect our citizens in their lives, in their limbs, and in their property and not handicap them by rules not applicable to the Federal Government. There can be no doubt of the constitutionality of *this provision* because article III, section 2, of the Constitution expressly provides that the Supreme Court shall have appellate jurisdiction both as to law and fact with such exceptions and under such regulations as the Congress shall make.

And it has been held, in every case in which the Supreme Court has dealt with this subject which I have been able to find after the most diligent search; that it is constitutional for the Congress to regulate the appellate jurisdiction of the Supreme Court.

The language of article III, section 2, is that—

> The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make.

As the Supreme Court declared in the Francis Wright case:

> What those powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control. Authority to limit the jurisdiction necessarily carries with it authority to limit the use of the jurisdiction. Not only may whole classes of cases be kept out of the jurisdiction altogether, but particular classes of questions may be subjected to reexamination and review, while others are not.

As a matter of fact, acts of Congress now deny both the Federal district courts and the Supreme Court jurisdiction of the overwhelming majority of all civil cases arising under the Constitution, the laws, and the treaties of the United States. This is done by the Congress under the provision that the Federal courts have no jurisdiction of civil cases unless the matter in controversy involves more than $10,000, exclusive of interest and costs.

There are many cases in which Congress has denied trial jurisdiction to inferior Federal courts and appellate jurisdiction to the Supreme Court. And if the Senate wishes to protect the citizens of the United States against self-confessed criminals, it should adopt this provision. This is the only way the Congress can legislate and secure the same protection to citizens in the courts of the States we have attempted to give to citizens in Federal courts under the provisions of this bill thus far approved by the Senate.

I would say to the Senate that any Senator who thinks that those who have voluntarily confessed that they have murdered or raped or robbed ought not to be punished should vote to strike this provision; but any Senator who believes that such self-confessed criminals ought to be punished should vote against the motion to strike this provision. This provision constitutes the only way the Congress can give protection to the overwhelming majority of American citizens. This is so because most crimes are offenses against State rather than Federal laws.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. TALMADGE. Mr. President, as I read the language of the amendment of the Senator on page 46, it relates only to admitting in evidence as voluntarily made an admission on confession of an accused if such ruling has been affirmed or otherwise upheld by the highest court of the State having appellate jurisdicton of the cause.

Mr. ERVIN. The Senator is correct.

Mr. TALMADGE. It relates only to the reviewability and admissibility of evidence.

Mr. ERVIN. The Senator is correct.

Mr. TALMADGE. And the Federal courts would have the right to review for any other cause, but not in the case of a voluntary confession.

Mr. ERVIN. The Senator is correct. And it is absurd to say that this is contrary to Marbury against Madison or is doing an injustice to Chief Justice John Marshall.

As a matter of fact, this provision is an effort to make it certain in the only way Congress can make it certain that what John Marshall himself, as Chief Justice, held to be the law of the Nation remains the law of the Nation. It is the only way Congress can restore the Constitution to what it meant from the 15th day of June 1790, until the 13th day of June 1966.

If one believes in standing by the Constitution, he should vote against striking the provision. But if one believes American citizens should be ruled by a judicial oligarchy consisting of five members of the Supreme Court rather than by the Constitution belonging to 200 million Americans, then he should vote to strike.

Mr. MORSE. Mr. President, will the Senator yield me 30 seconds?

Mr. TYDINGS. Mr. President, I yield 30 seconds to the Senator from Oregon.

Mr. MORSE. Mr. President, I say to my friend the Senator from North Carolina that Chief Justice John Marshall spoke for himself in Marbury against Madison and left no room for doubt. It is for the Supreme Court and not for my good friend the Senator from North Carolina to declare what the rights are.

Mr. ERVIN. John Marshall said that voluntary confessions are admissible in evidence in this country. And this is what the Constitution meant until the 13th day of June, 1966, when an attempt was made by five Judges to change the Constitution over the opposition of the other four Judges.

If one believes that the Constitution belonging to 200 million Americans ought not to be changed by the vote of one Supreme Court Justice to mean something contrary to what it has meant for 166 years, he should vote not to strike.

Mr. MORSE. Mr. President, will the Senator from Maryland yield me another 30 seconds?

Mr. TYDINGS. Mr. President, I yield an additional 30 seconds to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon is recognized for an additional 30 seconds.

Mr. MORSE. Mr. President, I say again to my dear friend the Senator from North Carolina that Chief Justice John Marshall recognized the Constitution as a living hand and not a dead hand and he made that very clear in Marbury against Madison.

It is for the Supreme Court to render their decisions from year to year and not bind itself as far as changing conditions or new knowledge is concerned in regard to the application or construction.

Mr. ERVIN. Mr. President, the Senator from North Carolina believes that the Constitution ought to be a living document. But if five Supreme Court judges can alter its plain language to conform to their personal notions, the Constitution is a dead document, whose remains are being disposed of according to the personal notions of the five Supreme Court judges acting as its executors and, I might add as its executioners.

SEVERAL SENATORS. Vote! Vote!

Mr. ERVIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from North Carolina has 1 minute remaining, and the Senator from Maryland has 2 minutes remaining.

Mr. McCLELLAN. Mr. President, I yield 1 minute to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 1 minute.

Mr. HOLLAND. Mr. President, I want to say, not speaking for Chief Justice John Marshall, but speaking for the people of the State of Florida, that after a court of Nisi Prius jurisdiction has found that a confession in a robbery case is voluntary, and after an intermediate appel-

late court has upheld that finding and said it was admissible in evidence and after the Supreme Court, on certiorari or appeal, as the case may be, has said the same thing, I think that the good citizens of Florida have an interest and a right to know that the case is wound up, and that I am willing to rely on the decision of one trial judge, three to five judges at the district level, and seven judges at the Supreme Court level.

Mr. ERVIN. After all, whether a confession is voluntary is a question of fact and not a question of law requiring a pronouncement by five members of the Supreme Court.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. TYDINGS. Mr. President, the first three divisions we voted on in title II go to substantive law. That is, the Senator from Arkansas proposed, and we have passed, substantive law taking a different position from that of the Supreme Court in the matter of Mallory, in the matter of McNab, and in the matter of Miranda. However, the proposal now before us is not a substantive matter. This is a matter which goes to the basis of our system.

This matter denies the right of appeal. This is not substantive. In the case of Brown against Mississippi where the men were beaten and hung and beaten for 3 days, and there was a mob outside the courtroom, and they were convicted, when the trial court and the intermediate court and the high court said it was a voluntary confession, and there was no more evidence and they were sentenced to hang, the Supreme Court had a right to review the voluntariness of that confession. Even though it was a poor man, he had a right to be protected.

What this would do would be to say: "No matter how horrendous the facts in the case were, you can only review the facts in the record, in a fifth amendment confession; you have no right to appeal to the Supreme Court." The individual is just out of luck.

I might point out one other thing: In our Constitution, when our Founding Fathers provided for a Supreme Court, they did so because of the mere necessity of unanimity. Alexander Hamilton put it in Federalist No. 80. He said:

> The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of the final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

If we adopt this division, we will have 50 different interpretations of what voluntariness is and what the fifth amendment means, and all to the derogation of the rights of the individual American.

Mr. President, I hope the Senate votes in favor of the motion to strike.

Mr. ERVIN. Mr. President, do I have any time remaining?

The PRESIDING OFFICER (Mr. MUSKIE in the chair). All time has expired.

The question is on agreeing to the motion.

Mr. ERVIN. If I had time remaining, I would say that the Senator from Maryland——

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the fourth division of the motion to strike title II. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SMATHERS (after having voted in the negative). On this vote I have a pair with the distinguished junior Senator from New York [Mr. KENNEDY]. If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. MORTON (when his name was called). On this vote I have a pair with the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN]. If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Wyoming [Mr. MCGEE], the Senator from South Dakota [Mr. MCGOVERN], and the Senator from New Mexico [Mr. MONTOYA] are necessarily absent.

The Senator from Wisconsin [Mr. NELSON] is absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING] and the Senator from Minnesota [Mr. MCCARTHY] would each vote "yea."

Mr. HICKENLOOPER. I announce that the Senator from Illinois [Mr. DIRKSEN], the Senator from Oregon [Mr. HATFIELD], and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

If present and voting, the Senator from Oregon [Mr. HATFIELD], the Senator from New York [Mr. JAVITS], and the Senator from California [Mr. KUCHEL] would each vote "yea."

The pair of the Senator from Illinois [Mr. DIRKSEN] has been previously announced.

The result was announced—yeas 52, nays 32, as follows:

[No. 143 Leg.]

YEAS—52

Aiken	Dominick	Mansfield
Allott	Fong	McIntyre
Anderson	Fulbright	Metcalf
Baker	Gore	Miller
Bayh	Griffin	Mondale
Bible	Hart	Monroney
Boggs	Hartke	Morse
Brewster	Inouye	Moss
Brooke	Jackson	Muskie
Burdick	Jordan, Idaho	Pastore
Case	Kennedy, Mass.	Pearson
Clark	Lausche	Pell
Cooper	Long, Mo.	Percy
Dodd	Magnuson	Prouty
Proxmire	Spong	Yarborough
Randolph	Symington	Young, Ohio
Ribicoff	Tydings	
Scott	Williams, N.J.	

NAYS—32

Bennett	Hansen	Murphy
Byrd, Va.	Hayden	Russell
Byrd, W. Va.	Hickenlooper	Smith
Cannon	Hill	Sparkman
Carlson	Holland	Stennis
Cotton	Hollings	Talmadge
Curtis	Hruska	Thurmond
Eastland	Jordan, N.C.	Tower
Ellender	Long, La.	Williams, Del.
Ervin	McClellan	Young, N. Dak.
Fannin	Mundt	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mr. Morton, for.
Mr. Smathers, against.

NOT VOTING—14

Bartlett	Hatfield	McGee
Church	Javits	McGovern
Dirksen	Kennedy, N.Y.	Montoya
Gruening	Kuchel	Nelson
Harris	McCarthy	

So the fourth division of the motion to strike title II was agreed to.

Mr. TYDINGS. Mr. President, I move to reconsider the vote by which division 4 of the motion to strike title II was agreed to.

Mr. MORSE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will report the next division.

The assistant legislative clerk read as follows:

On page 46, beginning at line 8, strike the language down to and including line 2, page 47.

Division 5 reads as follows:

"§ 3503. Admissibility in evidence of eyewitness testimony

"The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible into evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States; and neither the Supreme Court nor any inferior appellate court ordained and established by the Congress under article III of the Constitution of the United States shall have jurisdiction to review, reverse, vacate, modify, or disturb in any way a ruling of such a trial court or any trial court in any State, territory, district, commonwealth, or other possession of the United States admitting in evidence in any criminal prosecution the testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is tried."

(b) The section analysis of that chapter is amended by adding at the end thereof the following new items:

Mr. GRIFFIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. MUSKIE in the chair). The Senator will state it.

Mr. GRIFFIN. Mr. President, would it be in order to seek a further division of this particular section? I have an amendment, No. 787, which would have stricken out the language beginning on line 14, with the words "and neither the Supreme Court nor any inferior appellate court" and continuing through the balance of section 3503. My question, Mr. President, is whether it would be neces-

sary to ask unanimous consent to have a division along the lines of my amendment?

The PRESIDING OFFICER. The Chair will state that except for the previous unanimous-consent agreement, that could be done. The Senator may do it by unanimous consent.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that there be a further division of the vote and that there be a vote first on the portion of section 3503 beginning on line 9, page 46, through the words "United States," on line 14, reading as follows:

The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible into evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States—

The PRESIDING OFFICER. Is there objection?

Mr. CASE and Mr. ERVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CASE. Mr. President, I shall not object, but if this request is granted what is the situation with respect to time?

The PRESIDING OFFICER. The Chair will state that the question of time would have to be resolved by the Senate.

Mr. CASE. If nothing were done except to grant this request, what would be the situation as to time?

The PRESIDING OFFICER. If an additional division is permitted, the Chair would have no instruction as to time, and would require instruction.

Mr. CASE. And the limitation now pending would fall?

The PRESIDING OFFICER. The Chair would have no instruction as to the division of time.

Mr. CASE. There would be no limit on either of the parts of this question?

The PRESIDING OFFICER. The Chair would have to rule there would be no time provided for one part of the division in the present parliamentary situation.

Mr. CASE. To clarify the matter for the future of this great body, the Chair means there would be no time limitation?

The PRESIDING OFFICER. No additional time would be provided.

Mr. CASE. Therefore, debate could be——

The PRESIDING OFFICER. There would be no debate for one of the divisions.

Mr. GRIFFIN. Mr. President, may I modify my unanimous-consent request to make it a request that there be the same amount of time for each part of the division as we have under the previous agreement?

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. Mr. President, I would like to point out that if the division could be amended I would not object to the division, but if it is divided as the Senator from Michigan suggests, we would be passing a law saying that an eyewitness in a Federal case could look at a suspect in custody for the purpose of identifying him or exonerating him as the perpetrator of a crime, but he could not do that in State courts.

It seems to me that if we have a division we should amend this statute eventually so as to add on line 14 after the words "United States" and before the semicolon, "or in any trial court established by the laws of any State." Then it would be uniform.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. TYDINGS. Mr. President, reserving the right to object, could I see that amendment in writing? Would the Senator state it again?

The PRESIDING OFFICER. The Senator from Michigan made a unanimous-consent request.

Mr. TYDINGS. So far as the unanimous-consent request of the Senator from Michigan and the time limit, I am willing to agree to it. So far as amending again the present language of S. 917, before I agree to the unanimous-consent request I would like to see what I am agreeing to.

Mr. ERVIN. I understand amendments cannot be offered at this time.

The PRESIDING OFFICER. The Senator is correct.

Mr. ERVIN. I would like to ask if an amendment can be offered later to make this same rule apply in State courts as in Federal courts. If so, the suggested division would not be objectionable at all.

The PRESIDING OFFICER. The Chair will state that the provision could be amended later, or would be subject to amendment later, if the motion to strike is not agreed to.

Mr. TYDINGS. I withdraw my objection.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. RUSSELL. Mr. President, I do not know what the Senator proposes to amend. He did not give the page number.

The PRESIDING OFFICER. The Senator will restate the unanimous-consent request.

The Senator will suspend. The Senate will be in order.

The Senator will restate the unanimous-consent request.

Mr. GRIFFIN. On page 46, the business before the Senate is to strike all of section 3503 beginning on line 8.

It is my contention that there are two basic issues involved, and that there should be a division along the lines of my amendment, No. 787.

I propose that the Senate vote first whether to strike the language beginning on line 9 through the words "United States" on line 14; and then the Senate separately consider whether to strike the remainder of the section 3503 which limits the appellate jurisdiction of the Supreme Court as well as other Federal courts.

The PRESIDING OFFICER. Is there objection? Without objection, the unanimous-consent request is agreed to.

Mr. TYDINGS. Mr. President, I am speaking now on my 10 minutes allotted to the first part of the division of section 3503. I think that the proposal to divide was a wise and proper one.

The issue which the entire section 3503 poses is whether we wish to change the rule handed down in the Wade and Stovall cases. The issues involved there were whether a defendant was entitled to legal counsel during a criminal lineup when an eyewitness was picking him out, and whether his deprivation of counsel at that time was a deprivation of due process of law.

The Wade and Stovall case decisions said that it was. It pointed out that in many cases and in many circumstances it is possible to frameup a lineup. They point out situations where one suspect was under the age of 20 and all the others in the lineup were over 40, that that lineup was not fair. Also the situation with one oriental and 12 Caucasians in the lineup. The ruling in the Wade and Stovall cases did not pin it down to having counsel there at a lineup, but it did say, and the language was clear, that a lineup is an important part of a criminal investigation and a defendant should have the right to counsel, and if not his own counsel at least a public defender or some other lawyer there, to protect him against an unfair or framed lineup.

Mr. President, I urge the Senate to vote to strike.

Mr. ERVIN. Mr. President, under the division of title II, the Senate is considering a provision that the testimony of an eyewitness that he saw the accused commit or participate in the commission of a crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States.

From the 15th day of June 1790, the Supreme Court of the United States held, and all State courts in this Nation held, that the testimony of an eyewitness that he saw the accused commit the crime charged against him was admissible in evidence. The question whether it was truthful testimony or not was a question for the jury and not for the judge.

On June 12, 1967—last year—167 years after the provisions of the Constitution relied on; that is, the right of counsel clause, had been placed in the Constitution, the Supreme Court by a majority vote of 5 to 4 held, for the first time in American history, that it was unconstitutional for an eyewitness of a crime to be permitted to look at a suspect in custody for the purpose of identifying that suspect or exonerating him as the perpetrator of the crime the eyewitness saw committed unless an attorney represent the suspect is present.

The Supreme Court held, by its 5-to-4 majority, that where that occurred, the trial judge, either in a Federal or State court, could not admit the positive testimony of the eyewitness in a trial on the merits, that he saw the accused commit the crime and based his identification solely upon what he saw at the time the crime was being committed, unless the judge first conducted a preliminary inquiry, converted himself into a psychologist, and delved into the innermost mind of the eyewitness and found by clear and convincing evidence that the eyewitness was not influenced in any way in his conviction that he saw the accused commit

the crime by the fact that he had a pretrial look at the accused in the absence of his lawyer.

Mr. President, that is manifestly an absurd decision, with all due respect to the five Judges who agreed with it.

One of the Justices said, in substance, that he agreed to this startling decision because he felt himself bound by the Miranda case, although he had dissented in the Miranda case and had declared it to be bad law. If such Justice had not entertained the curious judicial notion that he was bound by an unwise case, it seems that only four of the Justices would have concurred in what became the majority decision in the Wade case.

With all due deference to the five Supreme Court Justices who did concur in the majority ruling in the Wade case, I assert that it is contrary to commonsense as well to to the precedents of 167 years to hold it unconstitutional for an eyewitness to look at a suspect in custody for the purpose of determining whether he was or was not the man he saw committing the crime merely because no lawyer representing the suspect is present.

The lawyer could not possibly alter the physical characteristics of the suspect which enabled the eyewitness to identify him.

The writer of the majority opinion made a strange confession in the Stovall case when the question arose as to whether the ruling was to be retroactive. He held that it would not be retroactive and gave as his reason that the ruling was contrary to all practices followed by the United States and the 50 States, that it was contrary to virtually all the decisions construing the words of the Constitution relating to the right to counsel, and that no one could have anticipated until the decision was handed down, that such a decision would ever be handed down.

Mr. President, I urge the Senate to vote against the motion to strike the first part of this provision and thus recognize as a valid constitutional interpretation the meaning assigned to the right of counsel clause of the sixth amendment at all times during the 167 years following its becoming a part of the Constitution.

Mr. DOMINICK. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. DOMINICK. Is my understanding correct that the first portion we will be voting on provides that identification is admissible, but it does not say anything about the weight that will be given to the identification?

Mr. ERVIN. That will be for the jury. That is as it was for 167 years.

Mr. DOMINICK. Does it say anything about the contrary evidence that can be put in? I am referring to the propriety of opposing counsel presenting evidence as to the lighting conditions at the time of the lineup, or the general makeup of the participants in the line up.

Mr. ERVIN. No. When the Stovall case was before the Court of Appeals for the Second Circuit the circuit court pointed out that it was impossible for the suspect to be prejudiced by a pretrial look because identification depends on the suspects' physical characteristics which a lawyer cannot alter. The court also pointed out that there is nothing effective a lawyer could do by being present at the time of a pretrial inspection of the suspect by an eyewitness.

Mr. DOMINICK. What you are saying is that this is one of the factors that should be considered by the jury.

Mr. ERVIN. Yes. This provision merely provides that the jury can hear the testimony of an eyewitness that he saw the accused commit the crime, even though he had a pretrial look in the absence of an attorney representing the accused.

Mr. PASTORE. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. PASTORE. The thing that concerns me is this: If what the Senator from North Carolina has said is true, that this has been declared unconstitutional by the Supreme Court, how do we make it constitutional? We have no authority to construe the Constitution.

Mr. ERVIN. But we have an obligation——

Mr. PASTORE. We passed this law and we said to the Court, "What you have declared to be unconstitutional we now declare to be constitutional." So the Court will say again, "It is unconstitutional," and that will be the end of it, will it not?

Mr. ERVIN. Not if the Court has enough fidelity to the Constitution to return to the sound interpretation it placed on the right to counsel clause of the sixth amendment throughout the preceding 167 years. Of course, the Court may say what the Senator from Rhode Island suggests, and in that event Congress and the States will be at liberty to amend the Constitution. After all, Congress is under the obligation to interpret the Constitution for itself when it legislates.

Of course, a decision of the Supreme Court is binding upon litigants, but it is not binding on Senators when they think it misconstrues the Constitution. Senators must construe the Constitution for themselves when they vote on legislation, and in my judgment are not bound by Supreme Court decisions which their considered intelligences and consciences tell them are wrong.

Mr. TOWER. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. TOWER. Is it not true that section 2 of article III of the Constitution defines the appellate jurisdiction of the Supreme Court as being subject to such exceptions and regulations as Congress shall make?

Mr. ERVIN. Oh, yes; but, of course, that is not involved in the first division of this question. It is in the second.

Mr. TOWER. I thank the Senator from North Carolina.

Mr. LAUSCHE. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield, if I have any time left.

Mr. LAUSCHE. The Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

It is my understanding that through a century and a half the courts never construed that the accused would have the absolute right to counsel at the time that he was being viewed by a victim of a criminal offense.

Mr. ERVIN. As a matter of fact, the Court held exactly the opposite for approximately 167 years.

Mr. LAUSCHE. But in the recent decision the Supreme Court construed the language "in all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense" to mean that counsel shall be present at the time the victim of a crime is viewing the supposed aggressor for identification?

Mr. ERVIN. Yes. The court gave as one of the reasons for the ruling in the Wade case that a lawyer could not cross-examine eyewitnesses about pretrial identification unless he was present and saw what was transpiring. Of course, that is absurd, because the same logic would assert that he could not cross-examine about a crime unless he was with his client when the crime was committed and saw what occurred at that time.

Mr. LAUSCHE. Is it not a fact that the Supreme Court had previously held that the language "the accused shall enjoy the right to have the assistance of counsel for his defense" does not mean he shall have the right of counsel at the time he is being viewed for identification purposes?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TYDINGS. Mr. President, I wonder if I may have the attention of my colleagues for 2 minutes merely to say that this entire provision is intended to upset a ruling by the Supreme Court; and to set up the Congress as the final interpreter of what the Constitution means, contrary to Marbury against Madison and the constitutional history of our country.

This is not a law enforcement matter. All the Wade and Stovall cases said was that when there is a lineup and the so-called eyewitness is there for identification of the suspect, there should be some kind of counsel there, whether it is a public defender or his own counsel or someone else. So this is not a law-enforcement measure.

Any one of my colleagues who has been a prosecutor or defense counsel knows that eyewitnesses are notoriously shaky. It is very difficult, at the time of a crime, because of emotion, to make a good identification; but once made, we all know how it is, particularly when some prosecutors or defense counsel work with those witnesses. They become firmer and firmer, and, no matter how they were at the start, they become unshakeable.

I submit there have been examples—and they were enumerated by the Supreme Court—in which the right of counsel was shown to be necessary in a lineup. Suppose it was your son or your nephew who was involved in an automobile wreck, and the issue was whether there was a hit and run.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TYDINGS. I yield myself 3 minutes. He was put in the lineup and all the individuals in the lineup were over 40 except your son or your nephew. Suppose the eyewitness knew it was a young person. Your son or nephew may not have been at the scene of the accident. He may have been as innocent as the driven snow. But once the eywitness labels him, he is going to stick by it.

This is not a law-enforcement measure. It is a proposal to have the Senate overrule the Supreme Court and say what the Constitution means.

I yield now to the Senator from California, and apologize for not yielding earlier.

Mr. MURPHY. I do not believe we should write legislation based on the assumption it is my son or your son that is involved. I think we consider it from the standpoint of the general welfare.

My question is, What exactly could the presence of counsel do to change the consideration or the decision or the selection of the eyewitness?

Mr. TYDINGS. If the defendant was the only oriental in a lineup of six, as was illustrated in the Stovall case, counsel could have said it was a frameup, that it would not be a fair lineup to have one oriental and the others all Caucasians, any more than it would be fair to have only one Negro and five white men.

Mr. MURPHY. Would not that information be available to defense counsel?

Mr. TYDINGS. That is the problem. How is it going to be available?

Mr. MURPHY. The defense lawyer would find it out.

Mr. TYDINGS. The accused appears in a lineup with five or six other men, and with no defense counsel. Is he going to be able to remember all that?

Mr. MURPHY. Does my esteemed colleague suggest that the mere fact there was a rigged lineup denies the right of the eyewitness, in spite of that fact, to identify the criminal he saw commit the crime?

Mr. TYDINGS. No, it does not deny any rights of an eyewitness, but for us to approve of a rigged or a framed lineup is unconscionable.

Mr. MURPHY. I would not think of approving that.

Mr. ERVIN. It not only applies to five or six, but it applies if there is only one person in the lineup.

The PRESIDING OFFICER. Is all time yielded back? Does the Senator from Maryland yield back his time?

Mr. TYDINGS. I yield back my time.

Mr. MURPHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

The question is on part 1 of division 5 of the motion to strike title II.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the affirmative). Mr. President, on this vote I have a pair with the distinguished Senator from New York [Mr. KENNEDY]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Wyoming [Mr. MCGEE], the Senator from South Dakota [Mr. MCGOVERN], the Senator from New Mexico [Mr. MONTOYA], and the Senator from Ohio [Mr. YOUNG], are necessarily absent.

The Senator from Wisconsin [Mr. NELSON] is absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING], the Senator from Minnesota [Mr. MCCARTHY], and the Senator from Ohio [Mr. YOUNG], would each vote "yea."

Mr. HICKENLOOPER. I announce that the Senator from Illinois [Mr. DIRKSEN], the Senator from Oregon [Mr. HATFIELD], and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

If present and voting, the Senator from New York [Mr. JAVITS] and the Senator from California [Mr. KUCHEL] would each vote "yea."

On this vote, the Senator from Illinois [Mr. DIRKSEN] is paired with the Senator from Oregon [Mr. HATFIELD]. If present and voting, the Senator from Illinois would vote "nay" and the Senator from Oregon would vote "yea."

The result was announced—yeas 21, nays 63, as follows:

[No. 144 Leg.]

YEAS—21

Brooke	Hartke	Morse
Burdick	Inouye	Pastore
Case	Kennedy, Mass.	Pell
Clark	Long, Mo.	Proxmire
Dodd	McIntyre	Scott
Fong	Metcalf	Tydings
Hart	Mondale	Williams, N.J.

NAYS—63

Aiken	Fulbright	Mundt
Allott	Gore	Murphy
Anderson	Griffin	Muskie
Baker	Hansen	Pearson
Bayh	Hayden	Percy
Bennett	Hickenlooper	Prouty
Bible	Hill	Randolph
Boggs	Holland	Ribicoff
Brewster	Hollings	Russell
Byrd, Va.	Hruska	Smathers
Byrd, W. Va.	Jackson	Smith
Cannon	Jordan, N.C.	Sparkman
Carlson	Jordan, Idaho	Spong
Cooper	Lausche	Stennis
Cotton	Long, La.	Symington
Curtis	Magnuson	Talmadge
Dominick	McClellan	Thurmond
Eastland	Miller	Tower
Ellender	Monroney	Williams, Del.
Ervin	Morton	Yarborough
Fannin	Moss	Young, N. Dak.

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—15

Bartlett	Hatfield	McGee
Church	Javits	McGovern
Dirksen	Kennedy, N.Y.	Montoya
Gruening	Kuchel	Nelson
Harris	McCarthy	Young, Ohio

So part 1 of the fifth division of the motion to strike title II was rejected.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which part 1 of division 5 of the motion to strike title II was rejected.

Mr. HOLLAND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will state the next division.

The ASSISTANT LEGISLATIVE CLERK. On page 46, line 14, beginning with the word "and", strike the language down to and including line 2, page 47, as follows:

> And neither the Supreme Court nor any inferior appellate court ordained and established by the Congress under article III of the Constitution of the United States shall have jurisdiction to review, reverse, vacate, modify, or disturb in any way a ruling of such a trial court or any trial court in any State, territory, district, commonwealth, or other possession of the United States admitting in evidence any criminal prosecution the testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is tried."
>
> (b) The section analysis of that chapter is amended by adding at the end thereof the following new items:

Mr. ERVIN. Mr. President, I do not care to argue the matter at great length. I merely wish to point out that the second division of this particular subsection of title II would deprive the Supreme Court of jurisdiction to review any ruling of any trial court, State or Federal, admitting in evidence the testimony of an eyewitness that he saw the accused commit the crime with which he stands charged.

Mr. President, I ask for the yeas and nays on the matter because I want to show the people of my State and the people of the other States that I attempted to give them the best protection they could get under the Constitution against a ruling contrary to both commonsense and the word of the Constitution.

The PRESIDING OFFICER. The yeas and nays have already been ordered on all parts of the question.

Mr. ERVIN. Mr. President, I do not desire to say anything further at this time except that I have taken an oath to support the Constitution, and that oath obligates me to support the Constitution as I interpret it to be and not according to what I believe to be a judicial aberration.

Mr. TYDINGS. Mr. President, I yield such time to the Senator from Michigan as he needs.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, the Senate has spoken with a loud voice to indicate its disagreement with the Supreme Court decisions in Miranda and Mallory and Wade. I have joined with the majority in attempting to make clear what reasonable rules should be applied in the situations covered by sections 3501 and 3503 of title II.

Congress may fail in this effort when the Supreme Court reviews what we have done. Nevertheless, we are, with a clear and loud voice, giving the Supreme Court another opportunity to look at these questions—but after Congress has spoken.

However, we must face the further question which arises with respect to the

question now before the Senate, as it arose with respect to section 3502—the question of whether Congress should take a much more drastic step and seek to limit the appellate jurisdiction of the U.S. Supreme Court.

I do not think it is necessary to argue whether Congress can take such a step under article III of the Constitution. I think the question is whether it would be the wise thing for Congress to do at this juncture in history.

In this respect, I believe that the following comment by Dean Frances Allen, of the University of Michigan Law School, goes to the very heart of the issue:

> Stripping the Court of jurisdiction in certain types of cases because members of Congress happen to disagree with the Court's view of the constitutional commands is a step down a road that leads to fundamental alteration in the distribution of powers of the American system. Once a first step is taken along this path, it will be difficult to avoid other steps in the future. I regard Title II as fully as ominous an assault on the Supreme Court as the court-packing proposal of the 1930's. In some respects it may be a more insidious threat, for it is less forthright and candid, and its dangers less apparent to the public at large.

Congress could increase the number of the Justices on the Supreme Court. Under the Constitution, we have the power to do that; if we disagree with a particular decision of the U.S. Supreme Court, I suppose that would be another way of registering our disagreement with the Court—and attempting to do something about it.

Mr. President, on another occasion in the 1930's the Senate wisely refused to accept a proposal for "packing the Court." And I think the Senate today has wisely refrained from asserting a power it has to upset the delicate balance which exists between the legislature and judicial branches of the Federal Government.

The question before the Senate is exactly the same as it was with respect to section 3502 and those who voted "yea" to strike out section 3502 should again vote "yea" to strike this particular provision of section 3503.

Mr. TYDINGS. Mr. President, I yield 1 minute to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 1 minute.

Mr. GORE. Mr. President, as the Senator from Michigan has said, the underlying principle with respect to section 3503 is identical to that of 3502—the right of the Federal court or the right of an American citizen to appeal to a Federal court on a question of admissibility of evidence.

The Senate in its selective consideration of the pending bill has today, in the view of the Senior Senator from Tennessee, done itself credit. It has viewed the problem selectively, approved some parts and disapproved other parts that have been presented.

I believe this provision goes too far, and I respectfully submit that view to the Senate.

Mr. TYDINGS. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 1 minute.

Mr. TYDINGS. Mr. President, I hope, for the reasons outlined by the distinguished Senator from Michigan and the distinguished senior Senator from Tennessee, and for the reasons I outlined in a motion to strike section 3502, that the Senate will vote to strike this part or division of section 3503.

This provision denies the right of appeal or certiorari to the Supreme Court on the issue of what constitutes proper right to counsel or other important rights. It upsets the ruling in Marbury against Madison.

I hope that the provision is struck.

Mr. ERVIN. Mr. President, I appeal to the Senate to vote against the motion to strike. This provision has no relevance to Marbury against Madison. All it would do would be to protect the people of our land against a ruling envisaged for the first time in American history by five of the nine judges on the 12th day of June 1967—a ruling which the majority opinion itself confessed, in essence, that no human being could anticipate that the Court would ever hand down such a ruling until the day it was handed down.

I ask the Senate to vote against the motion to strike so that we may give the people of our land the only protection we can give them against a rule invented by five of the nine justices contrary to the express words of the Constitution on the 12th day of June 1967—a rule which is incompatible with commonsense, the practice of Federal and State law enforcement officers, and the judicial precedents at all times during the preceding 167 years.

Mr. TYDINGS. Mr. President, I yield back the remainder of my time.

Mr. ERVIN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the motion to strike line 14 on page 46 beginning with the word "and"; down through line 2 on page 47.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CARLSON (after having voted in the affirmative). On this vote I have a pair with the senior Senator from Illinois [Mr. DIRKSEN]. If he were present, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. MANSFIELD (after having voted in the affirmative). On this vote I have a pair with the Senator from New York [Mr. KENNEDY]. If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from South Carolina [Mr. HOLLINGS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Wyoming [Mr. MCGEE], the Senator from South Dakota [Mr. MCGOVERN], the Senator from New Mexico [Mr. MONTOYA], and the Senator from Florida [Mr. SMATHERS] are necessarily absent.

The Senator from Wisconsin [Mr. NELSON] is absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING] would vote "yea."

On this vote, the Senator from Minnesota [Mr. MCCARTHY] is paired with the Senator from South Carolina [Mr. HOLLINGS]. If present and voting, the Senator from Minnesota would vote "yea" and the Senator from South Carolina would vote "nay."

Mr. HICKENLOOPER. I announce that the Senator from Illinois [Mr. DIRKSEN], the Senator from Oregon [Mr. HATFIELD], and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

The Senator from Kentucky [Mr. MORTON] is detained on official business.

If present and voting, the Senator from Oregon [Mr. HATFIELD], the Senator from New York [Mr. JAVITS], the Senator from Kentucky [Mr. MORTON], and the Senator from California [Mr. KUCHEL] would each vote "yea."

The pair of the Senator from Illinois [Mr. DIRKSEN] has been previously announced.

The result was announced—yeas 51, nays 30, as follows:

[No. 145 Leg.]

YEAS—51

Aiken	Gore	Moss
Allott	Griffin	Muskie
Anderson	Hart	Pastore
Baker	Hartke	Pearson
Bayh	Inouye	Pell
Bible	Jackson	Percy
Boggs	Jordan, Idaho	Prouty
Brewster	Kennedy, Mass.	Proxmire
Brooke	Lausche	Randolph
Burdick	Long, Mo.	Ribicoff
Case	Magnuson	Scott
Clark	McIntyre	Spong
Cooper	Metcalf	Symington
Dodd	Miller	Tydings
Dominick	Mondale	Williams, N.J.
Fong	Monroney	Yarborough
Fulbright	Morse	Young, Ohio

NAYS—30

Bennett	Hansen	Murphy
Byrd, Va.	Hayden	Russell
Byrd, W. Va.	Hickenlooper	Smith
Cannon	Hill	Sparkman
Cotton	Holland	Stennis
Curtis	Hruska	Talmadge
Eastland	Jordan, N.C.	Thurmond
Ellender	Long, La.	Tower
Ervin	McClellan	Williams, Del.
Fannin	Mundt	Young, N. Dak.

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Carlson, for.
Mansfield, against.

NOT VOTING—17

Bartlett	Hollings	McGovern
Church	Javits	Montoya
Dirksen	Kennedy, N.Y.	Morton
Gruening	Kuchel	Nelson
Harris	McCarthy	Smathers
Hatfield	McGee	

So the second part of the fifth division of the motion to strike title II was agreed to.

The PRESIDING OFFICER (Mr. MCINTYRE in the chair). The question is on the last division, division 6, of the motion to strike title II, beginning on line 3, page 47, extending to and including line 2, page 48.

The language is as follows:

SEC. 702. (a) Chapter 153, title 28, United States Code (relating to habeas corpus), is amended by adding at the end thereof the following new section:

"§ 2256. Procedures in obtaining writs of habeas corpus

"The judgment of a court of a State upon a plea or verdict of guilty in a criminal action shall be conclusive with respect to all questions of law or fact which were determined, or which could have been determined, in that action until such judgment is reversed, vacated, or modified by a court having jurisdiction to review by appeal or certiorari such judgment; and neither the Supreme Court nor any inferior court ordained and established by Congress under article III of the Constitution of the United States shall have jurisdiction to reverse, vacate, or modify any such judgment of a State court except upon appeal from, or writ of certiorari granted to review, a determination made with respect to such judgment upon review thereof by the highest court of that State having jurisdiction to review such judgment."

(b) The section analysis of that chapter is amended by adding at the end thereof the following new item:

"§ 2256. Procedures in obtaining writs of habeas corpus."

Mr. TYDINGS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. TYDINGS. Mr. President, I hope the Senate strikes the pending division for the same reason it voted to strike the preceding one.

This provision would prohibit recourse through the great writ of habeas corpus to any Federal court.

The last time Congress moved in this fashion it was a black mark, I think, on the history of this country. In the McCardle case, McCardle was an editor in Mississippi who protested against a military governor sent down there under the Reconstruction Act. When his case came to the Supreme Court a radical Congress—the Senate was in the process of trying the impeachment case of Andrew Johnson—did what I feel was a reprehensive act.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TYDINGS. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. TYDINGS. Mr. President, Congress then passed a bill which deprived the Supreme Court of the right to hear the habeas corpus appeal of Mr. McCardle, the Mississippi editor, because Congress feared the Supreme Court would upset the Reconstruction statutes permitting military governors in Southern States during a time of peace. I think that was a black day in the history of Congress.

I would hope that at this time we would not tamper with the great writ of habeas corpus.

Mr. ERVIN. Mr. President, this matter does not have the faintest resemblance to the situation involved in the McCardle case. As a matter of fact, it is exactly the opposite of the McCardle case. When the McCardle case was before the Supreme Court the Congress passed the law withdrawing jurisdiction of the Supreme Court to decide the McCardle case after it had been argued.

Instead of taking jurisdiction away from the Supreme Court this provision of title II gives jurisdiction to the Supreme Court. This provision gives an accused a right to trial in a State trial court where he can raise every defense he has regardless of whether it arises under State or Federal law. It gives him the right to appeal from the State trial court to the highest appellate court of the State having jurisdiction of his case and he can assert in that appellate court every right he has under State law or under Federal law. Then, he can appeal to the Supreme Court of the United States or apply to the Supreme Court of the United States for a writ of certiorari. If the Supreme Court finds he has been deprived of any constitutional right the Supreme Court can render a judgment vindicating that right.

Mr. President, this provision does not take away from any accused any Federal right. It provides that instead of taking jurisdiction away from the Supreme Court, the Supreme Court shall have jurisdiction, and that after an accused has been tried in a State court and has been convicted by a jury, or pleaded guilty, the State judgment shall stand until his case is reversed or modified or disturbed either by the appellate court of the State or the Supreme Court of the United States.

Mr. President, a statute conforming to this provision has been requested by the chief justices of the States of this Union. They have passed a formal resolution to this effect, which I have placed in the RECORD.

Here is what the chief justices of this Union of States ask Congress to do——

Mr. TALMADGE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ERVIN. Mr. President, I read from the CONGRESSIONAL RECORD of yesterday at page 14034:

Conference of Chief Justices—1952, 25 State Government, No. 11, p. 249 (Nov. 1952):

"Whereas it appears that by reason of certain principles enunciated in certain recent federal decisions, a person whose conviction in a criminal proceeding in a State Court has thereafter been affirmed by the highest court of that State, and whose petition for a review of the State Court's proceedings has been denied by the Supreme Court of the United States, may nevertheless obtain from a Federal district judge or Court, under a writ of habeas corpus, new, independent, and successive hearings based upon a petition supported only by the oath of the petitioner and containing only such statement of facts as were, or could have been, presented in the original proceedings in the State Courts;

"And whereas the multiplicity of these procedures available in the inferior Federal Courts to such convicted persons, and the consequent inordinate delays in the enforcement of criminal justice as the result of said Federal decisions will tend toward the dilution of the judicial sense of responsibility, may create grave and undesirable conflicts between Federal and State laws respecting fair trial and due process, and must inevitably lead to the impairment of the public confidence in our judicial institutions;

"Now therefore be it resolved that it is the considered view of the Chief Justices of the States of the Union, in conference duly assembled, that orderly Federal procedure under our dual system of government should require that a final judgment of a State's highest court be subject to review or reversal only by the Supreme Court of the United States.

Mr. President, this provision would give everybody an opportunity to be heard in a State trial court, in a State appellate court, and in the Supreme Court of the United States. It would put an end to the practice whereby the highest courts of the States are overruled by a single Federal district judge. It would put an end to the practice whereby a person convicted of a crime can wait for 20 years or 30 years after the crime was committed, when the witnesses are dead, or unavailable, or when their memories have vanished, and then apply for relief from the judgment of the highest court of a State to a Federal district judge.

As I said, the chief justices of the States of this Union have been imploring Congress for years to pass a law just like this provision of title II of this bill. Unless we do so, we will permit criminals to continue to make a mockery of justice. Instead of requiring persons convicted of crime in State courts to appeal decisions of State courts to the Supreme Court of the United States, we will continue to permit convicted criminals to wait until the witnesses whose testimony established their guilt are dead or otherwise unavailable, and then allow them to go free on the order of a district judge. Instead of being like the law in the McCardle case, this provision would give jurisdiction to the Supreme Court of the United States, just as the chief justices of the States have asked Congress to do, and require the accused to carry their pleas to that Court within the time prescribed by the law.

Mr. LAUSCHE. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I yield.

Mr. LAUSCHE. Under this measure, will an accused have the right to appeal or prosecute a petition in error throughout all of the appellate courts, and the supreme court of the State, and also the Supreme Court of the United States to insure that justice has been done to him under the law?

Mr. ERVIN. Absolutely. It provides for review by the Supreme Court of the United States, if the Supreme Court of the United States finds any merit in his contention. He has to do it while the witness is still living. He has to do it by direct appeal or direct application for a writ of certiorari.

Mr. LAUSCHE. That is, he must exercise his rights under the law of appeal or under the law of petition for certiorari but he cannot wait 10 or 15 years and then file a petition for a writ of habeas corpus and procure his release.

Mr. ERVIN. He must conform to the words of the marriage ceremony: Speak now or forever hereafter hold your peace.

Mr. PASTORE. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. PASTORE. Is there any limitation on when a convicted defendant could go to the Supreme Court?

Mr. ERVIN. Yes. The Supreme Court of the United States prescribes that

limitation. It is necessary for there to be a time limit if courts are going to function. I called attention yesterday to the present practice which permitted an accused to apply to a Federal district court to review the decision of a State court 20 years after his conviction and sentence.

Mr. PASTORE. Will the Senator tell us when that was first passed by the chief justices of the States?

Mr. ERVIN. In 1952, I believe, and reiterated a number of times since then.

Mr. PASTORE. Is the Senator from North Carolina saying that a man who thinks he is unjustly convicted still has the right to a writ of habeas corpus but must go before his own State Supreme Court——

Mr. ERVIN. He has to go before the State Supreme Court first.

Mr. PASTORE. And then he still can go to the Supreme Court of the United States?

Mr. ERVIN. Yes. He still can go to the Supreme Court of the United States.

Mr. PASTORE. I thank the Senator from North Carolina.

The PRESIDING OFFICER. Who yields time?

Mr. TYDINGS. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 3 minutes.

Mr. TYDINGS. Mr. President, in order to clarify the RECORD, the Constitution of the United States says:

> The privilege of the writ of habeas corpus shall not be suspended unless in cases of rebellion or invasion the public safety might require it.

This provision of title II clearly suspends the write of habeas corpus regarding the judgment of any court of a State in a criminal case.

The writ of habeas corpus is one of the pillars of Anglo-American civilization. It has been called the great writ. It is fundamental. It goes back to Magna Carta. It is the one writ which has been used time and time again in Anglo-American history to protect the individual who speaks out against the Crown, the Central Government, or the authority or power which exists.

It was used in 1763 when John Wilkes was sentenced to the Tower of London for criticizing the British Crown. It was used for Bushnell in 1670 in Great Britain and for William Penn who was accused of inciting to riot when he spoke to a Quaker meeting and the judge instructed the jury that they had to convict William Penn and William Bushnell, but the jury refused to find them guilty and the jury was sent to jail. They relied, of course, upon the great writ, the writ of habeas corpus, to release them.

Mr. President, as a former prosecutor, I do not like all the jailhouse appeals any more than any other prosecutor. But I believe we must not take this step, which has been taken only once before in the history of the country, during the Reconstruction period after the Civil War.

If we tamper with the great writ, one of the foundation stones of our constitutional liberty, then, Senators, I believe that we will have gone too far.

I hope that the motion to strike will carry.

Mr. BROOKE. Mr. President, will the Senator from Maryland yield?

Mr. TYDINGS. I yield.

Mr. BROOKE. Is it not true that the writ of habeas corpus is the only guarantee that a constitutional question raised in State proceedings in a State court will be heard by the Federal judiciary? Is that not true?

Mr. TYDINGS. Will the Senator kindly repeat his question?

Mr. BROOKE. Is it not true that the writ of habeas corpus is the only guarantee that a defendant in a State proceeding who has a constitutional question will have that question decided upon by the Federal judiciary?

Mr. TYDINGS. That is true. It is true because of the only writ of certiorari to the Supreme Court would be left for Federal review. This would put an impossible burden on the Supreme Court.

Mr. BROOKE. The writ of certiorari is discretionary with the Supreme Court, is that not true?

Mr. TYDINGS. That is correct.

Mr. BROOKE. As a practical matter, even an appeal is discretionary with the Supreme Court of the United States, is that not correct?

Mr. TYDINGS. That is correct.

Mr. BROOKE. So there remains only the writ of habeas corpus to guarantee that the constitutional question will ever get into a Federal district or a circuit court of appeals and then ultimately to the Supreme Court of the United States; is that not correct?

Mr. TYDINGS. That is correct.

Mr. BROOKE. I thank the Senator.

Mr. SCOTT. Mr. President, will the Senator from Maryland yield?

Mr. TYDINGS. I yield.

Mr. SCOTT. I do not seem to know what the Court would do in most circumstances, but for what it is worth, it is my sincere judgment that if Congress tampers with the great writ, it will have about as much chance of suspending——

Mr. BYRD of West Virginia. The Senate is not in order.

The PRESIDING OFFICER. The Senator from Pennsylvania will suspend.

The Senate will please come to order.

The Senator from Pennsylvania may proceed.

Mr. SCOTT. Mr. President, it is my feeling that while I voted to keep other sections in title II, if Congress tampers with the great writ, its action would have about as much chance of being held constitutional as the celebrated celluloid dog chasing the asbestos cat through hell.

Mr. ERVIN. Mr. President, I was very much amused by the statement——

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired. All his time has now expired.

Mr. ERVIN. What? How much time do I have remaining?

The PRESIDING OFFICER. No time is left to the Senator from North Carolina. One minute remains to the Senator from Maryland.

Mr. ERVIN. Mr. President, if I had any time left, I would say that the chief justices of the States would not ask Congress to pass an unconstitutional law. But, since I have no time to say it, I shall not say it. [Laughter.]

Mr. TYDINGS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has now been yielded back.

The question is on agreeing to division No. 6 of the motion to strike title II. On this question the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CARLSON. Mr. President, on this vote, I have a live pair with the distinguished Senator from Illinois [Mr. DIRKSEN]. If he were present and voting, he would vote "nay"; if I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. MANSFIELD (after having voted in the affirmative). On this vote, I have a pair with the distinguished Senator from New York [Mr. KENNEDY]. If he were present and voting, he would vote "yea"; if I were permitted to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Oklahoma [Mr. HARRIS], the Senator from South Carolina [Mr. HOLLINGS], the Senator from New York [Mr. KENNEDY], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Wyoming [Mr. MCGEE], the Senator from South Dakota [Mr. MCGOVERN], the Senator from New Mexico [Mr. MONTOYA], and the Senator from Florida [Mr. SMATHERS], are necessarily absent.

The Senator from Wisconsin [Mr. NELSON] is absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. GRUENING] would vote "yea."

On this vote, the Senator from Minnesota [Mr. MCCARTHY] is paired with the Senator from South Carolina [Mr. HOLLINGS]. If present and voting, the Senator from Minnesota would vote "yea," and the Senator from South Carolina would vote "nay."

Mr. HICKENLOOPER. I announce that the Senator from Illinois [Mr. DIRKSEN], the Senator from Oregon [Mr. HATFIELD], and the Senator from California [Mr. KUCHEL] are necessarily absent.

The Senator from New York [Mr. JAVITS] is absent on official business.

The Senator from Kentucky [Mr. MORTON] is detained on official business.

If present and voting, the Senator from Oregon [Mr. HATFIELD], the Senator from New York [Mr. JAVITS], the Senator from Kentucky [Mr. MORTON], and the Senator from California [Mr. KUCHEL] would each vote "yea."

The pair of the Senator from Illinois [Mr. DIRKSEN] has been previously announced.

The result was announced—yeas 54, nays 27, as follows:

[No. 146 Leg.]

YEAS—54

Aiken	Bayh	Brooke
Allott	Bible	Burdick
Anderson	Boggs	Byrd, W. Va.
Baker	Brewster	Cannon

Case	Jordan, Idaho	Pearson
Clark	Kennedy, Mass.	Pell
Cooper	Lausche	Percy
Cotton	Long, Mo.	Prouty
Dodd	Magnuson	Proxmire
Dominick	McIntyre	Randolph
Fong	Metcalf	Ribicoff
Fulbright	Miller	Scott
Gore	Mondale	Spong
Griffin	Monroney	Symington
Hart	Morse	Tydings
Hartke	Moss	Williams, N.J.
Inouye	Muskie	Yarborough
Jackson	Pastore	Young, Ohio

NAYS—27

Bennett	Hickenlooper	Russell
Byrd, Va.	Hill	Smith
Curtis	Holland	Sparkman
Eastland	Hruska	Stennis
Ellender	Jordan, N.C.	Talmadge
Ervin	Long, La.	Thurmond
Fannin	McClellan	Tower
Hansen	Mundt	Williams, Del.
Hayden	Murphy	Young, N. Dak.

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Carlson, for.
Mansfield, against.

NOT VOTING—17

Bartlett	Hollings	McGovern
Church	Javits	Montoya
Dirksen	Kennedy, N.Y.	Morton
Gruening	Kuchel	Nelson
Harris	McCarthy	Smathers
Hatfield	McGee	

So division No. 6 of the motion to strike title II was agreed to.

Mr. TYDINGS. Mr. President, I ask unanimous consent that the vote by which the sixth division was agreed to be reconsidered.

Mr. BROOKE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPONG. Mr. President, the Senate has today voted on amendments and motions relating to title II of the Omnibus Crime Control and Safe Streets Act of 1967. Contrary to many of my colleagues I have not viewed title II, as reported by the Judiciary Committee, as something to be opposed or supported in its entirety. Both opponents and proponents of title II have divided their arguments into several separate matters upon which the Senate is asked to work its will; namely, admissibility of voluntary confessions, reviewability of admissions in evidence of voluntary confessions, admissibility in evidence of eye witness testimony, and procedures for obtaining writs of habeas corpus.

A doctrinaire approach is never helpful, particularly when such delicate matters of constitutional law, personal liberty, and the protection of the public are involved. Nor should emotion, piqued by disagreement with court decision, lead to action that would fly into the face of our Constitution and, at best, be an irate but vain gesture.

I opposed motions that would have referred the questions posed by title II to further study. The Senate, having the questions before it, had an obligation to meet them head on. The number of serious crimes in the United States has increased 368 percent since 1944, a period during which our population has increased 48 percent. The public expects and is entitled to such statutory relief as the legislative branch of the Government might provide within the framework of our Constitution. I do not believe it has been shown to a certainty that court decisions alone have caused crime. Nevertheless, I am persuaded that these decisions have made it much more difficult to enforce law and, further, that people no longer fear the law or the judgment of our courts. Consequently, I do not believe we should delay a showing of the will of the Senate, particularly on matters which, in my judgment, will aid law enforcement without doing violence to the Constitution.

While I concur with those who believe a voluntary confession, one completely without duress, should be admissible in evidence in criminal prosecutions, I do not believe that *Miranda* v. *Arizona* can be reversed by statute. The report last year of the President's Commission on Law Enforcement and Administration of Justice did not consider the question of admissibility of voluntary confessions. Nevertheless, a sizable number of its membership indicated in a separate statement their concern for the problems caused law enforcement officials by circumstances brought about by the Miranda decision. It is significant that these Commission members recommended that consideration be given to a constitutional amendment involving voluntary confessions, not to statutory action. I concur that this is the only proper legislative approach.

There is ample statistical evidence to show the problems in criminal prosecution caused by *Mallory* v. *United States*. This case involved a rule of court and, in my judgment, no constitutional obstacle stands in the path of legislative repeal. Accordingly, I supported paragraph (c) of section 3501, as well as paragraphs (d) and (e) of the same section.

United States v. *Wade*, as the Committee report states, struck a harmful blow at the nationwide effort to control crime. Nothing in the Constitution warrants this rule of evidence that so limits the admissibility of eyewitness testimony. Accordingly, I supported that part of section 3503 that amends the law with regard to the admissibility of eyewitness testimony.

I oppose other measures, principally section 3502, part of section 3503, and that section dealing with the procedures in obtaining writs of habeas corpus because I do not believe that, in these instances, we can by statute limit the jurisdiction of the Supreme Court of the United States.

AMENDMENT NO. 812

Mr. ERVIN. Mr. President, I send to the desk an amendment and ask that it be printed and lie at the desk. This is an amendment which any Senator can vote for. It provides that when a Federal district court issues a writ of habeas corpus, the applicant must appeal and exhaust the State remedies, and that when he does not, he has not exhausted his State remedies. Second, he may have one habeas corpus proceeding.

I think that if Senators will familiarize themselves with the amendment, they will vote to adopt it.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

AMENDMENT NO. 805

Mr. SCOTT. Mr. President, I call up my amendment No. 805, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

On page 45, line 9, beginning with the word "is", strike out all through the period on line 11 and insert in lieu thereof the following: "was made or given by such person within four hours immediately following his arrest or other detention."

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. SCOTT. I first ask unanimous consent to change the word "four" on line 4 to "six."

The PRESIDING OFFICER. The amendment will be so modified.

Mr. MANSFIELD. Mr. President, I ask unanimous consent—and I believe this has been cleared—that there be a time allocation of 10 minutes on the pending amendment, the time to be equally divided between the Senator from Pennsylvania [Mr. SCOTT] and the manager of the bill, the Senator from Arkansas [Mr. MCCLELLAN].

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Who yields time?

Mr. SCOTT. Mr. President, I yield myself 2 minutes.

This is a very simple amendment. I have heard of no objection to it. I have discussed it with the various Senators interested in this matter. My amendment is an attempt to conform, as nearly as practicable, to title III of Public Law 90–226, the District of Columbia crime bill enacted last year, which provides that confessions obtained during periods of interrogation up to 3 hours shall not be excluded from evidence in the courts of the District of Columbia.

My amendment provides that the period during which confessions may be received or interrogations may continue, which may or may not result in a confession, shall in no case exceed 6 hours.

I prefer, myself, either 3 or 4 hours, but I am striving here for the art of the possible, and in trying to accommodate the views of a number of Senators, have come up with 6 hours, for the purpose of allowing time for out-of-State checks following the apprehension of the person charged with the crime.

I am told by the distinguished manager of the bill, the Senator from Arkansas [Mr. MCCLELLAN] that he has no objection to this amendment as modified, with the 6-hour provision.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. SCOTT. I yield.

Mr. McCLELLAN. I think the Senator's amendment ought to come at the end of the paragraph, so that this other provision will be retained in it, instead of where the Senator undertakes to place it. We have got to keep in there "to be found by the trial judge"; otherwise we would be making it arbitrary. If the judge finds it was not voluntary, no matter if he was in custody for only 30 minutes, the confession should not be admitted.

Mr. SCOTT. Mr. President, if there is no objection, I will modify my amendment to read as follows:

On page 45, line 11, after the word "jury" the following: "and if such confession was made or given by such person within six hours immediately following his arrest or other detention."

I ask unanimous consent to make that modification.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Mr. McCLELLAN. With that modification, I have no objection to the amendment. I say to the Senator that I want to be reasonable in this matter. I do not want an unreasonable time, but I do want an opportunity for the law enforcement officers to perform their duty. I think this is a fair adjustment of the differences of opinion about this matter.

Mr. SCOTT. I appreciate the Senator's statement.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. SCOTT. I yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I call to the attention of the Senate that we passed a law on this very subject last fall in connection with the amendments to the criminal code for the District of Columbia.

The committee on the District of Columbia has held extensive hearings over the past few years regarding the Mallory rule. The distinguished Senator from Nevada [Mr. BIBLE] and I participated in a number of meetings as conferees with the House in an effort to reach a solution in the 89th Congress. During the first session of the 90th Congress we again held hearings. Finally, last year we developed language acceptable to all, and it was signed into law. That language provides for 3 hours. I ask unanimous consent that title III of the District of Columbia crime bill be printed in the RECORD at this point.

There being no objection, the title III was ordered to be printed in the RECORD, as follows:

TITLE III

SEC. 301. (a) Any person arrested in the District of Columbia may be questioned with respect to any matter for a period not to exceed three hours immediately following his arrest. Such person shall be advised of and accorded his rights under applicable law respecting any such interrogation. In the case of any such arrested person who is released without being charged with a crime, his detention shall not be recorded as an arrest in any official record.

(b) Any statement, admission, or confession made by an arrested person within three hours immediately following his arrest shall not be excluded from evidence in the courts of the District of Columbia solely because of delay in presentment.

Mr. DOMINICK. Mr. President, even under those circumstances, the distinguished Senator from Oregon [Mr. MORSE] protested strongly against a 3-hour delay before arraignment.

Much as I appreciate the fact that the Senator from Pennsylvania is trying to make a time limitation on the phraseology contained in the bill before us today, I simply cannot go along with a 6-hour right of detention without an arraignment. I want to make my position known.

Certainly the proposal before us is inconsistent with the action Congress took just 6 months ago when developing a rule for the District of Columbia. I do not see how this bill can help but jeopardize, if not overrule, our earlier action.

I do not think it is right to proceed along this line.

Mr. SCOTT. I thank the distinguished Senator from Colorado. I agree 3 hours is preferable, but, in an effort to get as near total agreement as possible, I have agreed to 6 hours.

Mr. COTTON. Mr. President, will the Senator yield for a question?

Mr. SCOTT. I yield one-half minute.

Mr. COTTON. Does the Senator's provision apply only to the District of Columbia, or does it apply universally, throughout all the States?

Mr. SCOTT. This statement is of general application in Federal cases but it is designed to confirm as nearly as may be to the amendments to the District of Columbia code we adopted last year.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. TYDINGS. Mr. President, I wonder if I might address the distinguished Senator from Arkansas.

The PRESIDING OFFICER. Does the Senator from Arkansas yield?

Mr. McCLELLAN. I yield for that purpose.

Mr. TYDINGS. Mr. President, I concur with the remarks of the distinguished Senator from Colorado [Mr. DOMINICK]. I served with him on the conference, and I believe the point he has made was well taken.

The point he made was that just last year, after long debate in Congress, we finally agreed that 3 hours was a reasonable time. In that debate, as he pointed out, the Senator from Oregon argued long and hard that 3 hours was too long.

I asked the distinguished Senator from Arkansas [Mr. MCCLELLAN], in view of the need for uniformity, and the fact that we just passed that law with relation to the District of Columbia, whether or not he would agree with the thrust of the remarks of the Senator from Colorado [Mr. DOMINICK], if the Senator from Pennsylvania is willing, and make the period 3 hours rather than 6, in the interests of uniformity.

Mr. McCLELLAN. Mr. President, I cannot do that, because I have yielded here, in order to provide some time; so that they cannot say it is completely arbitrary. I have made adjustments in my own thinking about it and reached this agreement. The bill was reported without any limitation, and I think I am being fair.

Mr. TYDINGS. I agree that 6 hours is better than interrogation of suspects for 8 days or 8 years and then bring them up for arraignment.

Mr. McCLELLAN. No, I have made an adjustment here. I can appreciate that an officer might pick a suspect up at 12 o'clock at night, and need to check with officers in another State. That gives him only 6 hours, and he will have to wake them up before 6 o'clock the next morning.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. SCOTT. I yield to the Senator from Colorado.

Mr. ALLOTT. Mr. President, I do not think I am in basic disagreement with the Senator from Pennsylvania, but I ask him this question: Does he not agree that the question here is a classic example of legislating for metropolitan areas and forgetting about the rest of the country? If you have, in Nevada or Colorado, in one of the outlying towns, a situation where the sheriff picks up a man under the Dyer Act, for example, on transporting a stolen vehicle across a State line illegally, usually there are only one or two law officers, at the most, in such a town, and perhaps a knifing, a killing, an armed robbery, or something of that sort, is hot on the griddle at the same time.

The PRESIDING OFFICER. All the time of the Senator from Pennsylvania has expired.

Mr. ALLOTT. Will the Senator from Arkansas yield me 2 minutes?

Mr. McCLELLAN. Yes, I yield whatever time I have.

Mr. ALLOTT. In that case, you do not have a U.S. commissioner within 200 miles; how do you arraign a man in 3 hours, or in 6 hours, for that matter?

Mr. McCLELLAN. That is the point. You cannot in 3 hours. But we are trying to make some concession here. There may be instances where this would not be adequate; but I did not want to be in an attitude, and never have been, and have never believed the law should permit officers to use time simply to corkscrew a confession out of an accused. I do want a reasonable time for officers to do their duty.

Mr. ALLOTT. I agree with the Senator entirely, but somebody ought to answer that question.

Mr. SCOTT. Well, if the Senator will yield to me, since my time has expired, I am trying, here, to avoid having section 3501(c), proposed in title II of the pending bill, declared unconstitutional by eliminating its open-endedness in its present form. This is a way out of this problem; but we could extend the time to a point where we endanger the likelihood of having it remain on the statute books. Therefore, the distinguished floor manager and I have agreed on a period twice as long as that which title III of Public Law 90–226 stipulated for the District of Columbia.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. SCOTT. If I may do so on the time of the Senator from Arkansas.

Mr. COTTON. I feel very strongly, with the Senator from Colorado, that the way the bill stands now, the trial court can determine whether there has been a reasonable time. All kinds of things can happen, as I know as a former prosecuting attorney in a rural county. I think it is dangerous for us to try to set a limit on this matter. I shall not ask for a rollcall, but I am opposed to this amendment.

Mr. SCOTT. The way the bill stands now, there might be a 36- or a 24-hour interrogation, which would be of very doubtful validity, and the courts are left with the responsibility of trying to fix a reasonable rule.

Mr. President, I yield back the remainder of my time.

Mr. McCLELLAN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Pennsylvania, as modified.

Mr. ALLOTT. Mr. President, I ask for the yeas and nays.

Mr. MANSFIELD. Mr. President, I have to suggest the absence of a quorum because I told other Senators that there would be no further votes this evening.

Mr. ALLOTT. Mr. President, I understand from the majority leader that many Senators have been informed that there would not be any more votes tonight.

I do not care whether we put it over until tomorrow, but I will not insist or ask for a rollcall under those circumstances.

Mr. SCOTT. Mr. President, I ask for a vote on my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania, as modified.

The amendment was agreed to.

Mr. COTTON. Mr. President, I ask for a division.

The PRESIDING OFFICER. The Chair had announced the vote.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the request of the distinguished Senator from Vermont be agreed to and that there be a division.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

On a division, the amendment (No. 805) of the Senator from Pennsylvania, as modified, was agreed to.

Mr. SCOTT. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. PEARSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 797

Mr. LONG of Missouri. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

At the end of the bill add a new title VIII as follows:

"Section 555(b) of title 5, United States Code, is amended by adding the following sentence: 'Notwithstanding the provisions of the Uniform Military Training and Service Act, each individual shall be afforded the opportunity to appear in person, present testimony or other evidence, and be represented by counsel in any proceeding before the local selective service board having jurisdiction over him'."

Mr. LONG of Missouri. Mr. President, I ask for the yeas and nays.

Mr. McCLELLAN. Mr. President, I am not familiar with the amendment. I would like to have until tomorrow morning to become familiar with it.

Mr. LONG of Missouri. Mr. President, we will have the yeas and nays and take the amendment up tomorrow.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. LONG of Missouri. I yield.

Mr. MANSFIELD. Mr. President, it is my understanding that the Senator intends to discuss the amendment tomorrow.

Mr. LONG of Missouri. The Senator is correct.

I ask for the yeas and nays.

The yeas and nays were ordered.

METHODIST CHURCH ASSOCIATION OF COUNTIES ENDORSES GUN LAW

Mr. DODD. Mr. President, I recently received a letter from the Board of Christian Social Concerns of the United Methodist Church reaffirming its position in favor of strong Federal firearms controls.

H. Leonard Boche, director, department of social welfare, said the following in his letter:

As you will note from the attached statement, the Methodist Board of Christian Social Concerns, meeting in Louisville, Kentucky during October 1965, advocated Congressional action on gun control measures. At that time the Board registered its support of S. 1592 which, in its mail order restrictions on sales, is very similar to S. 1, Amendment No. 90.

Therefore, we would favor enactment of Title IV of S. 917 with the recommendation that rifles and shotguns be included in coverage to conform more with the bill our Board previously approved, S. 1592.

Mr. President, I ask that the full text of Mr. Boche's letter be printed in the RECORD along with the statement of policy of the United Methodist Church on the need for adoption of title IV with rifles and shotguns included, an amendment offered by Senator KENNEDY of Massachusetts.

I ask unanimous consent also to include a similar endorsement from the National Association of Counties communicated to me in a letter dated May 10, 1968, by Bernard F. Hillenbrand, the executive director.

I also ask unanimous consent to include in the RECORD at the conclusion of my remarks an analysis of "The Right To Bear Arms," by Steven H. Steinberg which appeared in the November 10, 1967, issue of the Seafarers Log, the official organ of the Seafarers International Union.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BOARD OF CHRISTIAN SOCIAL CONCERNS OF THE UNITED METHODIST CHURCH,
Washington, D.C., May 13, 1968.

Hon. THOMAS J. DODD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DODD: In view of Title IV of the Anticrime Bill (S. 917) coming before the Senate at this time, I would like to call your attention to our Board's position on firearms control.

As you will note from the attached statement, the Methodist Board of Christian Social Concerns, meeting in Louisville, Kentucky during October 1965, advocated Congressional action on gun control measures. At that time the Board registered its support for S. 1592 which, in its mail order restrictions on sales, is very similar to S. 1, Amendment 90.

Therefore, we would favor enactment of Title IV of S. 917 with the recommendation that rifles and shotguns be included in coverage to conform more with the bill our Board previously approved, S. 1592. Thank you for your consideration of this important matter.

Yours sincerely,
H. LEONARD BOCHE,
Director, Department of Social Welfare.

FIREARMS CONTROL

(Adopted by the General Board of Christian Social Concerns of the Methodist Church at the 1965 annual meeting, Louisville, Ky., Oct. 18–20)

The General Board of Christian Social Concerns of The Methodist Church, meeting this 20th day of October 1965, goes on record in support of amendments to the National Firearms Act of 1934 and the Federal Firearms Act of 1938 which would protect human beings by prohibiting interstate shipment of arms except by dealers licensed by the Treasury, by curbing imports of surplus military weapons, and by placing stricter controls on gun sales by retail dealers. We also support legislation which would make dealers, manufacturers or importers of "destructive weapons" (bombs, grenades, rockets, bazookas, etc.) subject to the registration provisions and taxes applied to persons dealing in or making gangster-type weapons (machine guns, sawed-off shotguns, etc.).

We recognize that such legislation may work some hardship on legitimate purchasers of guns and that it would not prevent all persons from securing guns who ought not to have them. However, we believe that federal action is essential to reduce the high number of homicides along with more adequate local and state controls.

We call upon Methodists to support legislation to this end in the present session of Congress and urge support to Senate Bills 1591 and 1592 and of House Resolution 6628 and other resolutions in the House similar to the Senate Bills.

We also call upon the Congress to make it illegal for citizens to buy, use, or possess "destructive weapons" such as bombs, grenades, rockets, bazookas and machine guns.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, D.C., May 10, 1968.

Hon. THOMAS J. DODD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DODD: On behalf of the National Association of Counties I should like to express our support of Federal legislative action to control the sale of firearms.

The following is our Association's policy statement on the subject, adopted August 2, 1967 at our annual conference.

"The National Association of Counties endorses federal legislation and urges the adoption of similar state and local laws and ordinance which would strengthen governments' ability to control the possession and sale of firearms. Laws requiring registration of firearms and permits for those who possess or carry them, prohibiting their sale to and possession by potentially dangerous persons, and preventing transportation and sale of military weapons are needed."

Very truly yours,
BERNARD F. HILLENBRAND,
Executive Director.

[From Seafarers Log, Nov. 10, 1967]

THE RIGHT TO BEAR ARMS: PRO AND CON

While waiting quietly for President Kennedy's motorcade to come down the crowd-packed streets, Lee Harvey Oswald checked his Italian-made Mannlicher-Carcano rifle carefully. It was a fine piece of equipment—quick-firing, long-range and equipped with a sensitive telescopic sight. It wasn't long ago that Oswald had scrawled the pseudonym "A. Hidell" on a gun order form, and mailed the slip into one of numerous mail-order gun companies in this country. This was the way Oswald received his gun, quite legally, with no law existing that might have prevented that sale. In this way, Lee Harvey Oswald was able to obtain a rifle and ammunition; in this way, he was able to point the gun's muzzle out the window; and it was in this way, that Oswald's mail-order rifle murdered a President and bereaved a nation.

In most states, a person can purchase anything from a starter pistol to a submachine-gun, in person, or, if his own locality prohibits the sale of a gun to him, he can obtain one by mail-order from another locality or state.

But the prospect of limiting the accessibility of guns has provoked strong emotions on both sides of the fence. As of this writing, numerous firearms bills have been studied by Congress but not one has been passed.

Just what are the issues?

THE EXTENT OF GUN CRIME

President Johnson, who has been pressing for Congressional passage of strong gun legislation, recently re-emphasized the need for action in a letter sent on September 15 to the Speaker of the House and the presiding officer of the Senate. He told of the late 1966 incident at the University of Texas, in which a student climbed into a building-tower with a legally-purchased mail-order arsenal of weapons, and killed or maimed 44 innocent people. In the 13-month period since that day, Johnson noted, guns were involved in over 6,500 murders, 50,000 robberies, 43,500 aggravated assaults, 2,600 accidental deaths, and 10,000 suicides across the nation. How many guns are in circulation?

In 1966 alone, the President continued, 2,000,000 guns were sold in the United States. An October 1966 study by the Senate Committee on the Judiciary, noted that "Best estimates indicate that there are, within the United States, over 100 million privately owned firearms in the possession of over 20 million citizens."

Who are the users of these weapons?

"Many millions," reports the President's Commission on Law Enforcement and Administration of Justice, ". . . belong to hunters, gun collectors, and other sportsmen. . . . Many other millions of firearms . . . are owned by citizens determined to protect their families . . . and property" from criminal attack and burglary.

In a nationwide sampling conducted by the National Opinion Research Center, 37 percent of the persons interviewed said that they kept firearms in the household to protect themselves.

Of the two million guns sold last year alone, the President remarked in the September 15 letter. "Many were sold to hardened criminals, snipers, mental defectives, rapists, habitual drunkards and juveniles."

Senator Edward Kennedy cites a recent survey which found that of 4,000 people ordering guns by mail from two Chicago firearms dealers, "one-fourth—or 1,000—of them had criminal records."

Who are the victims?

With FBI Director J. Edgar Hoover reporting that the use of firearms in dangerous crimes is on the upswing, the trend of statistics suggest that well over 100,000 Americans will be the victims of gun-crimes this year.

THE PRACTICAL ISSUE

Those who favor gun legislation say that while the effect of our penal system's threat of punishment may hold crime down to a certain extent, the best means of preventing crime in the first place would be to cut off the supply of weapons from potential criminals. With FBI statistics for the first nine months of 1966 showing that about ⅔ of all willful killings in this country are being committed with guns, a huge segment of criminal activity might be severely restricted, they say, if those guns become unavailable to dangerous persons.

There are objections to this idea. Various groups argue that such limitations are unwarranted, would be unfair to the law-abiding citizen, that the wrongdoers would obtain guns illegally with ease, that the causes of crime rather than the instruments of crime must be wiped out, and that abridgment of the "right to keep and bear arms" would be unconstitutional.

The basis for most proposals to control the sale of guns is that the buyer must be licensed, and can only receive his license after having been adjudged law-abiding and showing a specific need for the weapon.

The objections that are being brought against this are the same type of objections that arose years ago concerning another deadly weapon: the automobile. Regardless of the dissent that sprang up, when cars became hazardous to life and property, it became necessary to enforce strict safety measures by requiring that drivers be licensed.

A gun-user differs from a driver in that a gun-user controls a device that was specifically designed to kill; therefore, his intentions concerning the use of it must be considered carefully before it can be sold to him.

At present, according to Senator Joseph Tydings of Maryland, "practically no effective state or federal laws exist to control gun traffic. In nearly every state in the Union, anyone, regardless of his age, criminal record, or state of mind, can buy a gun or order one by mail, using order forms conveniently provided in sporting magazines and even comic books. In almost every state in the Union it is easier to buy a gun than to register to vote. It is easier to buy a gun than to get a driver's license or a prescription cold remedy."

The balancing of rights versus the dangers of violation of rights is the prickly subject that plagued Congress when it passed the National Firearms Act of 1934, the Federal Firearms Act of 1938, and the Mutual Security Act of 1954. None of these three laws provides for a close and effective check of the sales or purchases, or the prospective purchasers' characters, in regard to concealable weapons such as pistols, which are the devices most frequently used in crimes. The same touchy issues are plaguing the national legislature right now, but the pressure for some sort of strong crime-prevention system is building.

The delicateness of the subject is illustrated in an example given by Colorado's Senator Gordon Allott. A young woman who worked in his office "owns a handgun and knows how to use it. . . . About a year ago she was awakened at five in the morning by a noise in her apartment. It subsequently turned out that there was a prowler there. The young lady lives alone and her only real means of protection against lawless elements is the gun, which she brought with her from Colorado and keeps in her apartment. . . . With that gun she was able to subdue the housebreaker and hold him until police arrived. . . . The man involved has pleaded guilty . . . but I have often wondered what I would have had to tell that girl's parents if she had not had the gun." It is suggested that if a restrictive gun law had been in force in this case, the young woman had not had a gun, while the prowler might have obtained one illegally, that she might have been law-abiding but also dead. The key to such situations, and several other Senators have pointed out, is in the very careful construction of such laws, which should only prohibit the obtaining of these instruments of death by hardened criminals, the mentally ill, drunkards, felons, etc. In this way, they explain, lawful citizens would not be hampered in obtaining firearms, but in fact would be made more safe by a law that would shrink the threat of criminal attack.

The argument that criminals would obtain guns from other sources, if they couldn't buy them legally, is only partially valid, according to statistics from the offices of Senators Thomas Dodd of Connecticut and Tydings:

In the 1962–1965 period, 57 percent of all murders in the U.S. were committed with guns. However, in the few states with their own gun laws, gun-murder rates are significantly lower than in other states. Figures for states with controls show that in Pennsylvania, 43 percent of murders were by guns; in New Jersey, 39 percent; in Massachusetts, 35 percent; in New York, 32 percent. On the other hand, states with little or no gun controls showed: Colorado, 59 percent; Louisiana, 62 percent; New Mexico, 64 percent; Arizona, 66 percent; Montana, 68 percent; Texas, 69 percent; and Nebraska, 70 percent.

A question now arises as to why a Federal gun law is needed, if states appear so capable of cutting gun-crime rates themselves. The answer is that they have no way of preventing someone from simply crossing into a state with lesser controls and buying a gun, or from ordering a gun by mail from out-of-state. According to Senator Kennedy of Massachusetts, "Unless the Federal Government regulates gun traffic between the states, even strong state laws will be easily circumvented by interstate gun traffic. In 1963 alone, for example, over a million weapons were sold by mail order. In Massachusetts, which has strong gun laws, the traffic in guns cannot be halted because guns are easily purchased out of state. . . . Eighty-seven percent of the concealable firearms used in Massachusetts crimes came from out-of-state purchases."

THE CONSTITUTIONAL ISSUE

As Senator Allott puts it, a law that goes too far in its scope and restrictions would be akin to "cutting off the head to cure the headache." While Congress is taking pains to create gun legislation that is practical, effective, and cautious, there are lobbies which immediately claim that the Federal Government has no right to invoke any type of gun-control legislation.

The most powerful and largest lobby, the 850,000-member National Rifle Association, has stated that "firearms legislation is of insufficient value in the prevention of crime to justify the inevitable restrictions which such legislation places on law-abiding citizens." Such lobbies imply that Federal firearms legislation, while ineffectually attempting to protect citizens from the armed criminal, would instead chop off a vital portion of every citizen's Constitutional rights. Not only would this be in total disregard of the document on which this nation is founded, they say, but it would also open the door to an eventual police state against which there could be no redress.

On the other hand, a long sequence of Supreme Court decisions over the years has affirmed that such legislation is in no way unconstitutional. Three Federal gun control laws (not dealing with control as closely as several currently-proposed laws purportedly would) plus several state and local gun control laws have been in effect for years; all are Constitutional.

In addition, a variety of Federal, state, and local officials and groups have declared that Federal gun legislation, properly constructed, would in fact be a great aid in crushing the growing crime rate. According to Senator

Edward Kennedy, some of these include: the President of the United States; the Attorney General; the Director of the Federal Bureau of Investigation; the International Association of Chiefs of Police; the American Bar Association; the National Crime Commission; the country's best police chiefs and prosecutors, and, "I believe, the vast majority of our citizens."

Yet objections to Federally-operated gun controls are still voiced.

At the heart of the matter is the Second Amendment to the Constitution. It states:

"A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The so-called "gun lobby," which includes sportsmen's associations as well as dangerously fanatic groups such as the Minutemen, claim that this Amendment clearly grants the individual an absolute right to purchase, keep, and use guns. The President's National *Crime Commission*, however, stated that "The U.S. Supreme Court and lower Federal courts have consistently interpreted this Amendment only as a prohibition against Federal interference with State militia and not as a guarantee of an individual's right to keep or carry firearms. The argument that the Second Amendment prohibits State or Federal regulation of citizen ownership of firearms has no validity whatsoever."

In response to such rebuttals, anti-gun-legislation groups have taken to arguing that a "militia" need not be governmentally controlled, and therefore citizens should be able to form their own "militias" and obtain guns without restriction. Proponents of controls point out the trend of history in which the need for such "citizen armies" or "vigilante groups" has vanished, now that the United States has developed permanent professional, and comprehensive law enforcement organizations—local police, state troopers, the National Guard, the FBI, etc., to provide for internal protection.

Senator Dodd, in explaining the necessity for the firearms legislation he is proposing, said that "former Secretary of the Army, Stephen Ailes, testified that armed civilians are not necessary to the maintenance of the borders' safety, and that they are not a part of any defense plan for this Nation."

Yet a number of extremist organizations, intent on "saving America" from one threat or another, have created their own underground armed forces. Much of their equipment has been legally purchased from private sources (and until recently, government sources) and includes an amazing array of deadly materiel such as machine guns, bombs, and antitank guns, in addition to a wide assortment of other implements of war. A group known as the Minutemen was allegedly involved not long ago in a fanatic plot to attack and destroy several New York, New Jersey, and Connecticut camps which it had branded as "Communist." Fortunately, before the plan could be carried out, the Queens District Attorney's office uncovered the conspiracy and impounded the group's arsenal of tons of deadly devices. If not for the District Attorney's action, many innocent people might have been slaughtered.

Regulation of firearms in this country is provided for in limited degree, by various local, state, and federal laws. At issue is the necessity for stricter and more comprehensive controls which, it is argued, can only be made effective with new Federal legislation.

EXISTING FEDERAL LAW

Three major Federal laws concerning guns have been in existence for years.

The first of the existing Federal laws is the National Firearms Act of 1934, applying to machineguns, short-barreled and sawed-off rifles, shotguns, mufflers, silencers, and concealable firearms (Oswald's rifle was long-barreled and not covered by this legislation) but not pistols. It requires that owners of these weapons register them with the Treasury Department, and imposes taxes on firearms manufacturers, importers, and dealers.

The second Federal law, the Federal Firearms Act of 1938, provides that all firearms dealers and manufacturers whose business involves interstate or foreign commerce must be licensed. They are prohibited from knowingly shipping arms by interstate commerce to any person convicted of a felony or who is a fugitive from justice. Along with more technical provisions, it stipulates that licensed manufacturers and dealers are forbidden from transporting firearms into states in violation of state laws requiring a permit to purchase firearms.

Unfortunately, this particular provision provides no effective machinery for keeping dealers and manufacturers aware of which states and localities have which type of gun-control laws or related crime prevention laws. Thus, they are unable to cope with this very complex situation.

The third major Federal law (there have been a number of minor Federal firearms laws which made slight changes in these and other lesser Federal gun laws) is the Mutual Security Act of 1954, which authorizes the President to regulate the export and import of firearms. Administration of the Act has been delegated to the State Department.

The February, 1967 report of the President's Commission on Law Enforcement and the Administration of Justice, explains that none of these laws prevent a person from simply going to another locality or state to purchase firearms. "Despite the Federal laws therefore," writes the Commission, "practically anyone—the convicted criminal, the mental incompetent, or the habitual drunkard—can purchase firearms. . . ."

EXISTING STATE AND LOCAL LAW

With the ever-present dangers of crime, many state and local governments have taken it upon themselves to correct the situation as much as possible by enacting gun legislation.

Of the numerous states with some degree of controls, New York's Sullivan law provides the most stringent. It requires that a license is required not only to purchase a pistol or revolver, but also to keep it in one's home or place of business as well as to be able to carry the weapon. Though the state has no law requiring a license for rifles or shotguns, the Sullivan Law stipulates that they cannot be carried in a car or public place when loaded.

Even this tough law apparently is not satisfactory in preventing crime. Thus, through the efforts of New York City's Mayor John Lindsay, Senator Robert Kennedy, and Councilman Theodore Weiss, the New York City Council has just passed a strict law requiring that all persons owning or buying rifles and shotguns, register them and obtain a license from a new Firearms Control Board. Applicants would be fingerprinted and would be required to state if they had any criminal record or had once been treated for mental disorder, narcotics addiction, or alcoholism. There would be a small fee for registration.

In August, 1966, a strict gun law went into effect in the state of New Jersey. It required, among other things, that applicants for gun permits and identification cards submit fingerprints for a check of any possible criminal record. According to the state Attorney General's office, the check of the 45,771 fingerprints submitted during the first year of operation revealed that 3,167 applicants had arrest records. At the same time, the number of handgun permits issued under the new law rose to 13,279, as opposed to the pre-gun-law figure for fiscal 1965–1966 of 9,000. These statistics, the Attorney General's office explains, present evidence that the new law, contrary to gun lobby objections, is beneficial, fairer to applicants—it allows no favoritism or inconsistencies in issuing licenses and permits.

Still, state and local laws, many say, are just not enough. New Jersey Attorney General Arthur Sills writes: "Certainly the devastation wreaked upon the city of Newark (in the recent riots) . . . in conclusive testimony to the ineffectiveness of our law in preventing the importation of firearms into New Jersey by persons with criminal intent. We know that many of the weapons used by snipers and rioters . . . could not have been purchased legally in New Jersey. . . . If the riot in Newark is not enough to insure an immediate exercise of Congressional responsibility, what more will it take?"

LOBBIES AND PUBLIC OPINION

The question is a good one. Congress has been hard put in debating numerous gun-control bills—the Administration bill, the Dodd bill—and many others, and as yet has been unable to pass one. While national opinion surveys show a marked desire for gun laws, these laws apparently have been held back by the so-called gun lobby, a conglomeration of sportsmen's and right-wing groups, dominated in size and strength by a group which the New York Times declared has "organized one of the most successful lobbying campaigns in recent history": the National Rifle Association.

The NRA reportedly has 850,000 members, $10,000,000 in assets, and, according to the Times, is so well organized for exerting pressure through letter-writing campaigns that it can probably get its huge membership to "hit Congress with half a million letters on 72 hours notice." The NRA's anti-gunlaw campaign has been so effective, the Times adds, that except for one significant bill in the state of New Jersey, not one of the more than 500 gun-bills considered by state legislatures has passed.

NRA's executive vice president, Franklin Orth, explained that the NRA "looks upon the vast majority of bills for firearms legislation as the misdirected efforts of social reformers, do-gooders, and/or the completely uninformed. . . ."

In submitting evidence that the NRA and allied groups are the major hindrance to the passage of gun control legislation, Senator Edward Kennedy cites a January, 1967, Gallup Poll which showed that "73 percent of those polled favored a law which would require the registration of a rifle or a shotgun. Eighty-five percent favored a law requiring the registration of pistols. Seventy-five percent favored doing away with all mail order buying of guns. Eighty-four percent felt there should be restrictions on who is allowed to buy a gun. Only 12 percent believed that anyone who wants a gun should be allowed to buy one with no questions asked."

In view of such apparently overwhelming odds in favor of legislation, the lack of a new law appears even more puzzling. Senator Tydings explains: ". . . passage of an effective Federal law has been blocked by a very small, but very vocal, minority, using invalid arguments. The reason this bill has not been passed is that the overwhelming majority of Americans who favor reasonable gun control legislation have not been mobilized to write their Congressman and Senators in favor of such legislation."

"It is indeed amazing," says Senator Kennedy of Massachusettts, ". . . that we continune to tolerate a system of laws which makes it ridiculously easy for any criminal, madman, drug addict, or child to obtain lethal firearms which can be used to rain violence and death on innocent people."

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business this evening, it stand in recess until 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. McCLELLAN. Mr. President, can we ascertain what the principal business will be tomorrow? After the amendment has been disposed of, will we then work on title III? That is my understanding.

Mr. MANSFIELD. Mr. President, the Senator's understanding is correct. It is the majority leader's understanding that we will deal with title III following the disposition of the pending amendment.

Mr. LONG of Missouri. That is my understanding also.

COMMITTEE MEETING DURING THE SESSION OF THE SENATE TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Public Works be authorized to meet during the session of the Senate tomorrow. This request meets with the approval of the minority because a number of witnesses will be coming in from various Midwestern and Western States.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE BUSINESS

The PRESIDING OFFICER. What is the will of the Senate?

Mr. BYRD of West Virginia. Mr. President, I ask that there be a brief period for the transaction of routine business and that statements made therein be limited to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PETITION

The PRESIDING OFFICER laid before the Senate a resolution adopted by the City Council of the City of Trenton, N.J., praying for the defeat of the bill to liberalize truck size and weight limitations on interstate highways, which was referred to the Committee on Public Works.

ENROLLED BILLS SIGNED

The PRESIDING OFFICER announced that on today, May 21, 1968, the Vice President signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

S. 68. An act for the relief of Dr. Noel O. Gonzalez;

S. 107. An act for the relief of Cita Rita Leola Ines; and

S. 2248. An act for the relief of Dr. Jose Fuentes Roca.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ANDERSON, from the Committee on Aeronautical and Space Sciences, with an amendment:

H.R. 15856. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and administrative operations, and for other purposes (Rept. No. 1136).

By Mr. KENNEDY of Massachusetts, from the Committee on Labor and Public Welfare, with amendments:

H.R. 5404. An act to amend the National Science Foundation Act of 1950 to make changes and improvements in the organization and operation of the Foundation, and for other purposes (Rept. No. 1137).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. MAGNUSON, from the Committee on Commerce:

George Henry Hearn, of New York, to be a Federal Maritime Commissioner;

John E. Robson, of Illinois, to be Under Secretary of Transportation; and

Stanford G. Ross, of New York, to be General Counsel of the Department of Transportation.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. GORE (for himself and Mr. BAKER):

S. 3520. A bill to authorize the Secretary of the Interior to convey to the State of Tennessee certain lands within Great Smoky Mountains National Park and certain lands comprising the Gatlinburg Spur of the Foothills Parkway, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. SCOTT (for himself, Mr. BROOKE, Mr. CASE, Mr. CLARK, Mr. GRUENING, Mr. HATFIELD, Mr. JAVITS, and Mr. NELSON):

S. 3521. A bill to provide for the issuance of a gold medal to the widow of Rev. Dr. Martin Luther King, Jr., and the furnishing of duplicate medals in bronze to the Reverend Dr. Martin Luther King, Jr., Fund; to the Committee on Banking and Currency.

(See the remarks of Mr. SCOTT when he introduced the above bill, which appear under a separate heading.)

By Mr. LONG of Louisiana:

S. 3522. A bill to modify the comprehensive plan for flood control and improvement of the lower Mississippi River; to the Committee on Public Works.

By Mr. CARLSON:

S. 3523. A bill for the relief of Dr. Fernando de Elejalde; to the Committee on the Judiciary.

By Mr. ALLOTT (for himself and Mr. DOMINICK):

S. 3524. A bill to provide for the establishment of the Florissant Fossil Beds National Monument in the State of Colorado; to the Committee on Interior and Insular Affairs.

By Mr. BREWSTER:

S. 3525. A bill for the relief of Au Ming, and Li Chi Lik; to the Committee on the Judiciary.

By Mr. COTTON:

S. 3526. A bill for the relief of Marie-Louise (Mary Louise) Pierce; to the Committee on the Judiciary.

S. 3521—INTRODUCTION OF BILL TO PROVIDE FOR THE STRIKING OF REV. DR. MARTIN LUTHER KING, JR., MEDALS

Mr. SCOTT. Mr. President, I introduce, on behalf of Senators BROOKE, CASE, CLARK, GRUENING, HATFIELD, JAVITS, NELSON, and myself, a bill to authorize the striking of 1,000,000 commemorative bronze medals to be sold at cost to the Reverend Martin Luther King, Jr., Fund for education at Morehouse College in Atlanta. My bill also authorizes the striking of a gold medal to be presented to Dr. King's widow by the President of the United States.

On April 22, I proposed the striking of a million commemorative half dollars for resale by the Reverend Martin Luther King, Jr., Fund, but I subsequently learned of the Treasury Department's opposition to the issuance of such a coin. However, in a letter to me, Eva Adams, Director of the Mint, stated:

> The Department has recommended that commemorative medals be struck in lieu of a coin.

The bill which I offer today carries out the Treasury Department's recommendation.

I urge its prompt enactment.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3521) to provide for the issuance of a gold medal to the widow of Rev. Dr. Martin Luther King, Jr., and the furnishing of duplicate medals in bronze to the Reverend Dr. Martin Luther King, Jr., Fund introduced by Mr. SCOTT (for himself and others), was received, read twice by its title, and referred to the Committee on Banking and Currency.

ADDITIONAL COSPONSOR OF BILL

Mr. HARTKE. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from South Carolina [Mr. HOLLINGS] be added as a cosponsor of the bill (S. 3494) to amend title 39, United States Code, to provide for disciplinary action against employees in the postal field service who assault other employees in such service in the performance of official duties, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE RESOLUTION 291—RESOLUTION RELATING TO AUTHORIZATION OF EXPENDITURE FROM THE CONTINGENT FUND OF THE SENATE

Mr. HAYDEN submitted the following resolution (S. Res. 291); which was referred to the Committee on Rules and Administration:

S. RES. 291

Resolved, That the Committee on Appropriations hereby is authorized to expend from the contingent fund of the Senate, during the Ninetieth Congress, $35,000, in addition to the amounts, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act, approved August 2, 1946, and Senate Resolution 137, agreed to July 17, 1967.

SENATE RESOLUTION 292—RESOLUTION AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF SENATE HEARINGS ON COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY

Mr. SMATHERS submitted the following resolution (S. Res. 292); which was referred to the Committee on Rules and Administration:

S. RES. 292

Resolved, That there be printed for the use of the Senate Select Committee on Small Business one thousand, four hundred additional copies of part 5 of hearings before the committee during the 90th Congress, first and second sessions, entitled "Competitive Problems in the Drug Industry."

SENATE RESOLUTION 293—RESOLUTION RELATING TO A NEW APPROACH TOWARD ARMS CONTROL IN THE MIDDLE EAST

Mr. GRIFFIN. Mr. President, on behalf of myself and a number of colleagues, I submit, for appropriate reference, a resolution calling on the President of the United States to take all necessary measures through the United Nations to achieve a nonproliferation treaty on conventional weapons for the Middle East.

Those who have joined in cosponsoring this resolution are Senators ALLOTT, CARLSON, FONG, HANSEN, HART, HATFIELD, LONG of Missouri, MORTON, PEARSON, and PROUTY.

It is imperative, Mr. President, that some means be found to bring the Middle East arms race under control. I believe it is possible that a workable agreement can be achieved by bringing together the supplier nations—as well as the Middle East nations which purchase weapons—under the sponsorship of the United Nations. At the very least, such an effort should be undertaken.

When the nuclear nonproliferation treaty was negotiated, it was recognized that an effective agreement could be achieved only by controlling both the potential supply and the potential demand for nuclear weapons. There is reason to believe that this concept of shared responsibility could also be applied to regional, conventional arms control.

The basic political problems in the Middle East still appear insoluble, but it is possible that all the parties involved in the arms race could find mutual advantages in a treaty which effectively limits the flow of conventional weapons.

Mr. President, as I have said before, I do not underestimate the obstacles which stand in the way of reaching such an agreement. But I believe it is time for the United States to show some positive leadership in this critical area of foreign policy. Furthermore, I believe the United Nations is the logical and most suitable instrument to mobilize world opinion behind such a new approach to deescalate the Middle East arms race.

Of course, any proposal to control the arms flow into the area would have to safeguard the security interests of Israel as well as other Middle Eastern countries in order to win the agreement of those nations.

It would be necessary at the negotiating table to reach agreement upon the structure of a meaningful, stable balance of military power among all the principals—the nations supplying arms as well as the countries of the Middle East. To negotiate in such a forum would serve to remove any possible fears that a closed-door, United States-Soviet "deal" might be worked out at the expense of Israel or any other nation affected.

Following the pattern set by the nuclear nonproliferation treaty, it may be deemed appropriate for the great powers to guarantee the arms limitation agreement, or to provide a mechanism to deal with violations of the agreement and with threats of aggression in the area.

The resolution I offer today proposes a means for implementing the long-sought objective of effective arms control in the Middle East. A number of Government statements in the past have underscored the need for containing the vicious arms race but have proposed no workable procedure for getting substantive discussions underway.

The time has come to move beyond the statement of good intentions and to launch a plan of action.

Mr. President, as I advance this proposal, I wish to emphasize that arms control in the Middle East is no substitute for a firm and credible U.S. policy toward that area.

But an effort to curb the arms race is a necessary part of our Government's endeavor to reduce tension and to deter hostilities.

Mr. President, I believe that a new American initiative in this field is needed—and that a conventional nonproliferation treaty, negotiated among all the parties concerned, could succeed in limiting and controlling the contagious cycle of weapons procurement in the Middle East.

Mr. President, I ask unanimous consent that the text of the resolution being submitted today be printed at this point in the RECORD.

The PRESIDING OFFICER. The resolution will be received and appropriately referred; and, under the rule, the resolution will be printed in the RECORD.

The resolution (S. Res. 293) was referred to the Committee on Foreign Relations, as follows:

S. RES. 293

Whereas a stable and durable peace in the Middle East is essential to the foreign policy interests of the United States and to the common interest of all nations in furthering world peace; and

Whereas the peace and security of the nations of the Middle East are endangered by the continuation of a wasteful and destructive arms race in that area: Now, therefore, be it

Resolved, That the President is hereby requested to take all necessary measures, through the United States delegation to the United Nations, to bring before the United Nations for its consideration at the earliest possible time a resolution providing for the convening of an international conference for the purpose of preparing, and reaching agreement on, a non-proliferation treaty controlling and limiting the supply of conventional military armaments, and of military assistance and services, to the nations of the Middle East.

SEC. 2. It is the sense of the Senate that all the nations of th Middle East as well as all nations furnishing or supplying military armaments or military assistance and services to the nations of the Middle East should be represented at the international conference provided for in this resolution.

Mr. GRIFFIN. In addition, Mr. President, I ask unanimous consent that a wire service story by John S. Burnett concerning the resolution be printed in the RECORD.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

[United Press International, May 16, 1968]

(By John S. Burnett)

WASHINGTON.—There is a possibility the United States will propose to the United Nations the creation of an international arms conference to stop the massive military arms shipments to the Middle East, U.S. officials said today.

The proposal, which embodies the fourth principal for peace outlined by President Johnson June 19, was set forth Tuesday in a speech on the Senate floor by Robert P. Griffin, a Republican from Michigan.

Today, State Department officials said the suggestion was being "seriously considered" by high Department officials, presumably the Secretary of State.

Griffin, in his speech, said:

"I believe that effective control of the Middle East arms race can be achieved through collective responsibility, shared by the nations which supply weapons as well as the Middle East nations which receive them.

"Any effort, then, to negotiate a conventional weapons nonproliferation treaty should include participation by the supplier nations and the recipient nations."

Griffin said he would introduce a resolution in the Senate May 21 calling on President Johnson to ask the United Nations to convene "an international conference for the purpose of preparing, and reaching agreement on a nonproliferation treaty controlling and limiting the supply of conventional military armaments, and of military assistance and services, to the nations of the Middle East."

Officials here said the United States would probably wait until the Senate adopted the resolution before presenting the idea to the United Nations.

The State Department was obviously pleased at Griffin's proposal and one official noted that it was the first time any member of Congress, either Democrat or Republican, has introduced legislation implementing any of the five points for peace listed by President Johnson after last year's June Arab-Israeli war.

The earliest the Senate could complete action on the measure would be several weeks but it is doubtful that the expected approval would come so soon.

The resolution, after introduction in to the chamber, goes to the Senate Foreign Relations Committee.

"I am optimistic that the Senate will approve my proposal," Griffin told UPI, "But it may take some time."

He pointed out there were other more pressing domestic matters on the Senate's agenda that had to be cleared before action could be taken on his measure.

But he conceded that if the administration pressed for the resolution's passage, final action could come in the near future.

One official said the State Department and White House could agree to make the proposal before Senate action although such a move was unlikely.

Despite the positive reaction here, there were serious doubts that the case could get very far in the United Nations.

The proposal would be presented to Secretary General U Thant by a member of the U.S. Delegation, probably Ambassador Arthur J. Goldberg. The U.S. request would take the form of a resolution to be acted upon by the world body.

It was thought here that such a proposal in the U.N. would fare better despite the Soviet Union's anticipated objections, than have private diplomatic efforts to end the arms race in the area.

The United States has often attempted to get the Soviets to stop pouring arms into the Middle East but without success. And officials here believe that if the Griffin resolution gets out of the Senate, chances of an international conference to end the arms race still were remote.

Mr. GRIFFIN. Mr. President, I also ask unanimous consent that an article entitled "GRIFFIN Would Stifle Middle East Arms Race," written by Tom Ochiltree, and published in the State Journal of Lansing, Mich., on May 15, 1968, be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GRIFFIN WOULD STIFLE MIDDLE EAST ARMS RACE

(By Tom Ochiltree)

WASHINGTON.—Sen Robert P. Griffin, R-Mich., urged the Johnson Administration today to undertake "a bold new approach" to the problem of halting the spiraling arms race in the troubled middle east.

He proposed the calling of an international conference sponsored by the United Nations to tackle the problem.

Such a conference would be attended by arms supplying nations such as the Soviet Union, the United States, Britain and France as well as by the arms receiving nations such as Israel, Egypt, Syria, Iraq and others.

The conference, under Griffin's proposal, would produce a treaty halting the further piling up of conventional arms in the Middle East in a way that the new nuclear nonproliferation treaty seeks to halt the spread in the world of nuclear weapons.

Griffin's suggested diplomatic initiative, contains these new elements: it fully involves the United Nations in this particular arms control problem. The anticipated pact would put limitations on both supplier nations and recipient nations, rather than attack the problem in isolation from just one side or the other, as has been done heretofore. Such a treaty also would put the world on notice that the two super powers—the United States and the Soviet Union—have a joint interest in keeping the Middle East arms race from ballooning any further.

UNITED STATES, REDS IN ACCORD

It was the shared interest of Washington and Moscow in halting the further spread of nuclear weapons which brought about the nuclear non-proliferation treaty. Griffin explained to newsmen that he was seeking to extend his principle to a regional area of conventional arms control.

In a speech prepared for delivery on the Senate floor, Griffin said:

"We can't afford to ignore the time bomb ticking away in that part of the world. A bold new approach is urgently needed to bring under control the escalating arms race which threatens to explode at any time into a major war . . .

"Even though the basic political issues which divide Israel from her Arab neighbors still appear insoluble, it is possible that all the parties involved could find mutual advantages in a treaty to bring the current arms race under control.

"The recently concluded nuclear nonproliferation treaty embodies concepts which could be applied regionally to limit the buildup of conventional weapons.

"A non-proliferation treaty on conventional weapons, negotiated among supplier nations as well as recipient nations, offers the best hope of containing the conflict and keeping it within manageable proportions."

He pointed out that nearly a year has passed since the six-day Arab-Israeli war and that little has been accomplished thus far in lessening tensions. The Michigan Senator described the Middle East as "a tinderbox that is potentially more dangerous to world peace than Vietnam."

BILL DISTRIBUTED

Griffin drafted a resolution encompassing his proposal and distributed it among fellow Senators giving them a chance to be cosponsors if they desired. He plans to introduce the resolution next Tuesday.

He also sent advance copies of the resolution and of his floor speech to the White House, the state department and George W. Ball, the new American ambassador to the United Nations.

If adopted the resolution would express "the sense of the Senate."

While it would not be binding on the Administration, it would represent considerable moral and political suasion.

Griffin said he felt that President Johnson, on the basis of past statements, should be interested in the idea.

Failure and frustration has followed efforts heretofore to control the Middle East arms race. In 1950 the United States, Britain and France entered into a tripartite declaration designed to preserve the status quo as between Israel and surrounding hostile Arab states and to keep down the level of arms accumulated by the two sides.

BREAKS DOWN

Even among the Western powers this arrangement did not work well, and it broke down completely with the entry of the Soviet Union into the Middle East picture beginning with the Suez crisis of 1957.

Griffin conceded to reporters that "the Russians held the key" as to whether or not his idea would work. But he suggested that the Russians, who have spent a vast amount providing arms to the Arabs, now may be as interested as the United States in seeing the Middle East armament race halted.

THE CONTINUING CRISIS IN THE MIDDLE EAST

Mr. PEARSON. Mr. President, I commend the distinguished junior Senator from Michigan for his initiative in introducng today what I consider to be a most worthwhile proposal to lessen tensions in the dangerous Middle East. I am pleased to be a cosponsor of this resolution, for I view it as the type of bold new approach to peace which must be attempted if we are to begin to move toward any lasting settlement in this critical area.

The facts of the case are all too clear; the danger signals all too evident. Slowly, but inexorably, the Arab States of the Middle East who were defeated by the Israelis last June are rearming for what they openly admit will be another attempt to destroy the State of Israel. They are being helped in this effort by the Soviet Union. In fact, it has been estimated that the Soviets have already replaced between 80 and 100 percent of the Arab weapons which were lost or destroyed in the war.

The problem is where to go from here. The United States has a firm commitment to the people of Israel that has been reaffirmed time and time again over the years. We cannot allow her security to be placed in serious jeopardy while the Soviets arm their Arab allies for war. And so we may soon have to increase our military aid to Israel and the moderate Arab States if the pace of Soviet arms shipments continues at its present rate.

Thus, Mr. President, we find ourselves in the ironic position of fueling the engine of war in our pursuit of peace. For in our effort to insure a continuing military balance of power, we will be directly contributing to a spiraling arms race that can only threaten the interests of everyone involved.

This Nation has spoken many times of our desire for peace in the Middle East and of our lasting commitment to help stimulate regional economic development. We have offered again and again, both publicly and privately, to reach an agreement with the Soviets to limit arms shipments to the area. We have even deliberately refrained from giving as much military aid to Israel and the moderate Arab States as we might in the hope that this concrete gesture of sincerity would add weight to our words. But to date we have failed.

Yet we cannot afford to accept this failure as final for surely another avenue to peace is possible. Political divisions within the Communist world no doubt make it difficult for the Soviets to openly accept our offer without appearing to be collaborating too closely with the capitalist enemy. That is why an alternative path to the same goal will likely prove more productive.

In essence, that is the purpose of the resolution introduced today. By allowing an international conference under the auspices of the United Nations to formalize a nonproliferation arrangement limiting arms shipments to the Middle East we can improve somewhat the chances of Soviet agreement. For the United Nations represents or should represent the interests of the entire world, not just one part of it and an agreement reached under its sponsorship would be less suspect by the rest of the Communist camp as a sellout to the "Western imperialists." At least the attempt must be made. Peace asks no more. Security demands no less.

Mr. President, anxious as we may be to see real peace brought to the Middle East, we nonetheless must force ourselves to face the enormity of the task we undertake. The roots of the current crisis go back through the years and a lasting solution will not be quick or easy. We must also recognize the sad fact that we have unwittingly contributed to the current impasse by a paralysis of policy that allowed the situation to deteriorate dangerously.

This paralysis of policy may be attributed at least in part to the fact that we have been distracted by our involvement in Vietnam. This preoccupation with the war, while thoroughly understandable, has nonetheless inhibited our imagination, limited our capacity for flexibility, and stifled our initiative, not only in the Middle East but also other parts of the world as well.

For example, Mr. President, we have gradually allowed ourselves to become almost the sole big power champions of Israel and thus have contributed to a polarization of the region which has turned it into a direct East-West confrontation, thus immeasurably adding to the dangers of any armed clash that might occur.

We must honor our commitment to Israel, of course. The Israelis have every right to live in the Middle East and the Arabs must eventually accept this if peace is ever to come to this troubled

land. But the fact remains that, for the moment at least, many Arab extremists are so caught up in their hatred of Israel that they are blinded to the great advantages peace and regional economic development can bring them. Not surprisingly, this intense emotional reaction to Israel has affected the attitude of these Arabs toward the United States. We are now regarded with such distrust in many Arab minds that our ability to act as a peacemaker in the region has been severely limited. And the Soviets can now attract the Arabs into their camp simply by offering to help them in their struggle against Israel and her Western allies led by the United States.

Mr. President, this intense East-West flavor of the conflict is dangerous to one and all, even to the Soviets. The U.S.S.R. has a long-standing historical interest in the region and has no doubt taken and will continue to take full advantages of the opportunities offered by our lack of diplomatic initiative over the past few years. Nonetheless, they too have an interest in avoiding a direct Soviet-American confrontation.

The Soviets have shown several times a full appreciation of the dangers such a confrontation always presents. When the Arab-Israeli war was being fought last June the Soviets backed away from all-out support of their Arab allies and by use of the "hotline" and other means informed the United States that they had no desire to see the conflict escalate into a full-blown Soviet-American confrontation.

Thus, Mr. President, there is reason to hope that, given the proper mechanism, the Soviets will adhere to an agreement that will limit the potential for renewed hostilities in the Middle East with all their attendant risks.

This does not mean, however, that they will stop playing the dangerous game they have followed with such success to date—namely, to encourage their Arab allies to avoid compromise with Israel and to keep the situation fluid. This position is best suited to the Soviet aim of further penetration of the region. But the fact remains that they found themselves unable to restrain their Arab allies once before and they might find themselves unable to do so once again if they let the situation get out of control.

Thus, they face the need to keep the pot boiling, but at a lower temperature. A United Nations limitation on the arms race, hopefully coupled with indirect negotiations between the belligerents themselves, might offer the way out both superpowers are seeking.

Mr. President, while the chances for some limitation on arms shipments to the Middle East may be considered reasonable in light of the common interest possessed by both the United States and the U.S.S.R. in avoiding a renewal of hostilities, and while both superpowers can exert a certain amount of influence over their allies to bring this settlement about under the proper circumstances, we must nonetheless be prepared for a long and difficult search for peace and we must be willing to give this search the attention it deserves. No one would for a moment suggest any lessening of our effort to reach a settlement of our involvement in Vietnam, but it is high time that we displayed more interest and imagination in our quest for stability in the Middle East.

The resolution introduced today is just one of a number of proposals which the United States could bring forth. Another, for example, is the suggestion contained in Senate Resolution 155 which was introduced last year by the distinguished junior Senator from Tennessee [Mr. BAKER] and which I was pleased to cosponsor. This measure, which passed the Senate last December, called for the creation of a Middle East nuclear desalting cooperative—MEND—of truly tremendous proportions that would produce cheap electrical power and more fresh water than the combined flow of the major tributaries of the Jordan River. The economic benefits for the entire Middle East, both Arab and Israel portions, would be revolutionary.

Thus, the United States can do more than it has done to bring peace to the Middle East. It can do more to demonstrate to the belligerents the economic rewards that would be theirs once they have learned to live together. It can do more to offer the Soviet Union a politically acceptable method of reaching a mutually desirable agreement. And it can do more to develop a flexible and responsive position in concert with its Israeli and moderate Arab allies.

Mr. President, we cannot regain all the influence we have lost recently through indifference and lack of skill in countering Soviet diplomatic maneuvers. But we can regain the initiative and we can demonstrate our concern in a constructive way. Let us begin by enacting this resolution.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, May 21, 1968, he presented to the President of the United States the following enrolled bills:

S. 68. An act for the relief of Dr. Noel O. Gonzalez;

S. 107. An act for the relief of Cita Rita Leola Ines; and

S. 2248. An act for the relief of Dr. Jose Fuentes Roca.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961—AMENDMENT

AMENDMENT NO. 809

Mr. WILLIAMS of Delaware submitted an amendment, intended to be proposed by him, to the bill (S. 3091) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes, which was referred to the Committee on Foreign Relations and ordered to be printed.

EXTENSION OF TAX ON TRANSPORTATION OF PERSONS BY AIR—AMENDMENTS

AMENDMENT NO. 810

Mr. SMATHERS submitted amendments, intended to be proposed by him, to the bill (H.R. 16241) to extend the tax on the transportation of persons by air and to reduce the personal exemption from duty in the case of returning residents, which were referred to the Committee on Finance and ordered to be printed.

DEPARTMENT OF AGRICULTURE APPROPRIATION BILL, 1969—AMENDMENT

AMENDMENT NO. 811

Mr. WILLIAMS of Delaware submitted an amendment, intended to be proposed by him, to the bill (H.R. 16913) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1969, and for other purposes, which was referred to the Committee on Appropriations and ordered to be printed.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967—AMENDMENTS

AMENDMENT NO. 812

Mr. ERVIN submitted amendments, intended to be proposed by him, to the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes, which were ordered to lie on the table and to be printed.

AMENDMENTS NOS. 813 AND 814

Mr. BYRD of West Virginia submitted two amendments, intended to be proposed by him, to Senate bill 917, supra, which were ordered to lie on the table and to be printed.

AMENDMENT NO. 815

Mr. TYDINGS submitted an amendment, intended to be proposed by him, to Senate bill 917, supra, which was ordered to lie on the table and to be printed.

WHERE WE HAVE BEEN, WHERE WE ARE, WHERE WE ARE GOING

Mr. McINTYRE. Mr. President, pessimism seems to be the order of the day. Gloom and uncertainty cloud our vision of the future. At least, this is the impression one can get by listening to some of the voices clamoring for attention.

But last night, President Johnson raised his voice in a look at where we have been, where we are, and where we are going. And his voice rang with confidence based on reality.

He said:

> This nation has not yet solved its problems. . . . But we are on the move. The age-old ills which agitate our communities can be solved. They will not be solved if we give way to crippling despair. . . . They will be solved by realism, by determination, by commitment—by hope and by self-discipline.

The President's faith in the future is based on what we have done in the past, and on the strengths we have today as a people.

For example, three decades ago the Federal investment in health and medical care was 0.2 percent of our gross national product. The percentage going into education at that time was 0.1 percent. Today, the percentages are almost nine times higher for health and 14 times higher for education.

A similar story could be told for many other areas of national concern.

Thus, the President's optimism is based on hard, incontrovertible facts and on a firm belief in this country's ability to

face up to its challenges and to solve its problems.

I think it is important that we keep a sense of perspective in our minds as we survey where we have been and where we are going, and I salute President Johnson for reminding us of the great strength that lies within us as a nation.

Mr. President, I ask unanimous consent that the text of President Johnson's speech be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENT JOHNSON KNOWS THAT AMERICA CAN SOLVE ITS PROBLEMS

Mr. BREWSTER. Mr. President, last night, President Johnson delivered a speech which was both realistic and idealistic. It listed our problems, and it cited our achievements. It diagnosed our challenges and it prescribed solutions.

At one point, the President said:

As a people, we have never been more prosperous . . . . Yet we have never been more conscious of—or more troubled about—the poverty in our midst.

But the President is not disheartened by this contrast. He stated:

To me, the fact that we recognize a gap—a gap between achievement and expectation—represents a sympton of health; a sign of self-renewal; a sign that our prosperous nation has not succumbed to complacency and self-indulgence.

The President's speech was a firm expression of his faith in the ability of America to solve its problems.

I join the Senator from New Hampshire [Mr. MCINTYRE] in asking unanimous consent that the President's address be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

TEXT OF THE PRESIDENT'S REMARKS BEFORE THE ARTHRITIS FOUNDATION DINNER AT THE WALDORF ASTORIA, NEW YORK CITY, MAY 20, 1968

Nothing could give me greater pleasure than to join you in paying honor to Floyd Odlum.

Floyd Odlum's life, his career, and his civic concerns reflect a great deal, not only about the man, but about our country.

He has built a legendary record of personal and financial success.

But we who know Floyd are more impressed by the riches he has given than by the riches he has received.

His unselfish spirit tells us something about America: it reflects the truth, I believe, about a land and a people who, for all our faults, remain the most compassionate on earth.

Tonight we honor Floyd Odlum's contributions to a noble and vital cause: the Arthritis Foundation.

For a long time—and especially in the past four and a half years—I have made health and education a special interest of mine, for at least two reasons:

First of all, it puzzled and troubled me that these two vital fields were so often, and for so many years, the step-children of public policy.

Second, everything in my background and my career has led me to the conviction that we can find no solutions for our problems unless we overcome physical incapacity and ignorance—wherever they exist.

During my Administration, I have tried to show just how much government can do in these fields.

But I have known all along how little government can do—without the active and vocal support of private citizens, private organizations. You are such citizens—and the Arthritis Foundation is such an organization.

Surely no more vexing health problem can be named than the one you battle: arthritis.

It is the Nation's number one crippler.

It robs the national economy of nearly $4 billion a year in lost time, medical expenses, diminished strength and productivity.

Worse of all, it ruins lives.

Like so many problems that we face in our Nation, this one is deep-rooted, pervasive, mysterious, unyielding. Like many other problems, it is buried beneath layers of ignorance and years of indifference. Like many other problems, this one is a long way from final solution.

But like our other problems, it is within our power to solve.

A famous commentator on the social scene once wrote, "It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair; we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way."

That was Charles Dickens, one of the early warriors against poverty and illness and injustice. He was describing a period nearly 200 years ago. And he saw many similarities in his own period a little over a century ago.

Many would find similarities today.

As a people, we have never been more prosperous. Our Gross National Product has risen to over $830 billion—and the median family income in America is over $8,000 per year.

In the past seven years the growth alone in our nation's wealth has been greater than our entire gross national product thirty years ago.

Yet we have never been more conscious of—or more troubled about—the poverty in our midst.

More Americans than ever before are in school today: one-third of the nation's population. More people are going to college—more to adult education classes, more to job training and all the other forms of education from post-cradle to post-graduate.

Yet never have we been more restless about the shortcomings of public education; never have we been more eager to extend the opportunity for learning to those who have been neglected.

Our nation's health standards are at an all-time high, measured by any index we can devise: life expectancy, infant mortality, incidence of disease, delivery of health services.

Yet never have we as a people been more anxious—and more eager to extend the quality and the reach of health care.

There are some desparing critics who look at this gap between achievement and expectation and claim there is a sickness in our society.

To me, the fact that we recognize a gap—between achievement and expectation—represents a symptom of health; a sign of self-renewal; a sign that our prosperous nation has not succumbed to complacency and self-indulgence.

I suppose there will be many who call me a Pollyanna for saying that; and I have been called worse. But I am no Pollyanna.

I simply refuse to accept the diagnosis of fatal sickness in our society.

I refuse to accept the diagnosis of indifference in our society—because I see millions of Americans and billions of dollars working to conquer poverty; I see an unprecedented outpouring of imagination and concern and money to cure the handicap of poverty.

I refuse to accept a diagnosis of deep racism in our society—because I see a people struggling as never before to overcome injustice; I cannot ignore the progress we have made in this decade to write equality in our books of law.

Look at these simple facts. In 30 years of struggle—from 1935 to 1964—we increased the Federal share of our gross national product going into health and medical care from .2% to .7%. Then, in 4 years time we more than doubled it—from .7% to 1.7%.

The same thing is true in the field of education. From 1935 to 1964, the Federal share of GNP for education moved from .1% to .7%. Then in 4 years time, we doubled it—from .7% to .1.4%.

These are the true measures of our progress; how much of our nation's wealth we allocate to these two areas of our greatest public concern—education and health.

In the past five years, the Federal government has enacted over thirty major health measures. It has more than doubled annual spending on health, from $6 billion to almost $14 billion.

We are beginning to see the results. The death rate in the United States is now as low as it has ever been in the nation's history. It is 3% lower than in 1963—an annual saving of fifty-four thousand American lives.

Infant deaths have declined 13% since 1963—to the lowest rate in our nation's history.

And Medicare now brings the guarantee of adequate health service to over 19 million senior Americans.

Now is no time to retreat from this progress.

This nation has not yet solved its problems. Poverty, racism, ignorance and illness still plague us.

But we are on the move. The age-old ills which agitate our communities can be solved.

They will not be solved if we give way to crippling despair.

They will not be solved if we delude ourselves with labels and slogans which are substitutes for ideas—not ideas.

They will be solved by realism, by determination, by commitment—by hope and by self-discipline.

They will be solved by the impatience of the American people—but not by pessimism.

They will be solved by the concern of individuals like Floyd Odlum, the man we honor tonight—and organizations, like the Arthritis Foundation.

We must face the future with the spirit attributed to Winston Churchill in a story which may or may not be true. It seems that the Prime Minister was visited by a delegation of Temperance ladies who came to complain about his consumption of brandy.

One little lady addressed Mr. Churchill and declared, "Why Mr. Prime Minister, if all the brandy you drank in a year was poured into this room, it would come up to here."

Mr. Churchill looked solemnly at the floor, at the ceiling, and at the little lady's hand somewhere near the midway mark. And then he muttered, "So little done; so much to do!"

DEMANDS

Mr. BYRD of West Virginia. Mr. President, I have been informed by my staff that, earlier this afternoon, a group of 10 to 15 persons visited my office. They indicated that they were representatives of the Poor People's Campaign and that they would like to deliver a memorandum to me. The group was told by my assistant that I was on the Senate floor, the Senate being in session, whereupon one of the individuals stated that the group would like to speak with an aide. My assistant talked with the group, and he was handed a paper to be delivered to me. The group indicated that they would "come back later."

My assistant has supplied me with the memorandum, which contains "Demands

of Poor People's Campaign to Executive Agencies."

I ask unanimous consent to insert this memorandum, addressed "Dear Senator," and carrying the names of Ralph Abernathy and Walter Fauntroy, in the RECORD.

There being no objection the memorandum was ordered to be printed in the RECORD as follows:

DEAR SENATOR: Enclosed please find copies of *demands* presented by the Poor People's Campaign to Federal Agencies visited. If you have any questions or inquiries regarding these demands, please feel free to contact Miss Marian Wright at 659–4240 or Phil Buskirk at 543–5250.

We should appreciate any support you may lend in achieving the reasonable objectives expressed in these demands.

Sincerely yours,

RALPH ABERNATHY,
President, Southern Christian Leadership Conference.

WALTER FAUNTROY,
Washington Coordinator, Southern Christian Leadership Conference.

DEMANDS OF POOR PEOPLE'S CAMPAIGN TO EXECUTIVE AGENCIES

(Prepared by the Women's International League for Peace and Freedom and Friends Committee on National Legislation, May 2, 1968)

HEALTH, EDUCATION, AND WELFARE—SCHOOLS

We demand that the Office of Education and the Department of Health, Education and Welfare reverse their priorities to give primary and massive attention to the needs of poor black, brown and white children and parents—and to the criminally deficient schools these children attend. We are asking for an end to the preferential treatment given to high salaried administrators, powerful professional organizations, universities and corporations, to antiquated and racist state departments of education, and to politicians who generally respond only to white, middle-class constituencies and the pampered schools of suburbia. You will know how quickly and how well this too-long delayed change is taking place because it will be clearly reflected in the radical changes you make in the way you hire and use your staff, the way you spend the public funds entrusted to you, and in the amount of power you give the poor to help shape and direct education programs in Washington, the states and local communities.

We demand that funding for educational programs should be granted or withheld on the basis of whether such programs permit poor black, brown and white children to express their own worth and dignity as human beings, as well as the extent to which instruction, teaching materials and the total learning process stresses the contributions and the common humanity of minority groups.

The Department must develop more effective programs which insure equality of opportunity for all students. Specifically we demand that HEW:

1. Abolish freedom of choice school desegregation plans in the South and adopt clear guidelines which would require and result in the eradication of dual school systems in the southern states by fall of 1968. In addition, a massive program to end Northern urban school segregation should be immediately implemented.

2. Establish a national structure and mechanism which provides for continuous input by poor black, brown and white people in the design, development, operation and evaluation of all Federally funded education programs.

3. Increase the accountability of local schools receiving Federal assistance by requiring that per pupil expenditures, dropout and survival rates and reading levels by school and grade be made available to the public on a regular and periodic basis, and establish a thorough and periodic review system to determine the effectiveness of Title I and II funds as presently utilized by school districts.

4. Develop a comprehensive Federally funded program designed to prepare inservice teachers for certification or recertification and upgrading skills. The Office of Education should establish standards to require that the content of these training programs adequately prepare persons to cope with the needs and problems of poor black, brown and white urban and rural youngsters.

5. HEW should require that all State Departments of Education develop recruitment and promotional policies which will utilize minority group personnel in key policy making positions.

STATE DEPARTMENT

We ask the Department of State to use its influence to enforce the provisions of the Treaty of Guadalupe-Hidalgo which guarantee the cultural and land rights of the Spanish speaking peoples of New Mexico, Colorado, etc.

In addition to this treaty matter there are several foreign policy issues which have an impact on the way this country views its black and poor people.

The continued relations with South Africa and Portugal and the impact of U.S. business interests in these countries lends support to racist practices which are totally incompatible with our expressed domestic national goals and the maintenance of these relations to facilitate the use of military bases and space tracking stations is a disgrace. As we move at home to achieve the promise of this nation we must not encumber that effort with the support in any way of racist societies abroad.

The immigration of foreign workers, seasonal or otherwise, should cease until every poor American who wishes it, has attained a decent acceptable living standard and is gainfully employed. The regular influx of Mexicans and Caribbeans are cases in point.

We ask the Department of State to use its good offices to bring about a cessation of the use of "green card" holders as strike breakers in the Southwest.

The Agency for International Development has contracted with private food companies to develop fortified foods to meet nutritional needs in underdeveloped countries which our own poor are denied. We demand that AID share its information and finding with the Department of Agriculture in developing fortified foods for the American poor.

It is recognized that these issues involve domestic weaknesses which we shall bring to the attention of the department.

OFFICE OF ECONOMIC OPPORTUNITY

We as representatives of the black, brown and white poor of America, come to the Office of Economic Opportunity with a heavy and bitter heart. We go to other departments of the federal government as spokesmen for the neglected poor of the country because our citizens who live in poverty have been forgotten or never considered by those who administer programs for big business, the large acreage farmer, the skilled worker and others who are part of America's mainstream of plenty.

But OEO was the agency supposedly created especially to serve the poor and to give them the power and the money to speak and to act for themselves. You have failed us. You were to be our spokesman within the federal government, but our needs have gone unspoken. You were to help us take our rightful places as dignified and independent citizens in our communities but our manhood and womanhood have been sold into bondage to local politicians and hostile governors.

Four years ago we had hope. We thought that an Office of Economic Opportunity would provide us a doorway into American society. But OEO became the middleman captured by the myriad of anti-poverty agencies that continued their traditional and abusive ways of dealing with poor people.

We demand that the OEO reorder its priorities so that the consumers of services be involved in the policy making, the technical assistance, and employment levels of those programs which continue to be administered by the agency.

We call on OEO:

1. To issue regulations implementing citizen participation from poverty communities. This must be done without delay to bring the voice of the poor to those chambers where public officials now control OEO programs.

2. To issue and implement a clear and simple appeals procedure that can be understood by the poor.

3. To spell out requirements that will clearly make local politicians responsible for respecting the civil and human rights of the poor. This step is essential in those cases where the local political authority refuses to participate in the CAP program or where the CAP agency is not responsive to the needs of the poor. If these problems exist, poor people must be able to operate their own programs.

4. To establish firm guidelines for the regional offices. Despite new authorities vested in the regional offices Washington officials must not abdicate all responsibility for programs.

5. To publicly support the 75 million summer jobs, the $25 million Head Start supplemental appropriation, and the general $279 million supplemental appropriation.

6. To monitor the budgets of delegate Federal agencies so funds that could be used are not returned to the Treasury. Last year $52 million from the Neighborhood Youth Corps was returned to the Treasury. This must not happen again.

7. To restructure and convene the OEO Citizen Advisory Council and to give the poor stronger and broader representation on this Council. OEO must maintain communication with representatives of the poor and with those private groups concerned with the anti-poverty programs.

We further demand of OEO:

1. That all programs delegated by OEO to other Federal agencies contain strong provisions for OEO to monitor and evaluate programs. OEO must set up procedures so that the poor are integral part of all evaluations.

2. That the agency make available a plan for its future organizational structure.

3. That the Economic Opportunity Council be activated and an executive director be appointed (as provided by law) with the concurrence of the Citizens' Advisory Council. OEO must insist that the new fragmented anti-poverty effort of a variety of Federal agencies be coordinated through itself and the EOC. OEO is the symbol of the Federal anti-poverty efforts of all Federal agencies.

4. That programs which do not meet quality standards must be defunded and the funds made available to other groups in the community. Lack of involvement of the poor must be considered prima facie evidence of lack of quality.

HOUSING AND URBAN DEVELOPMENT

Mr. Secretary, we come to you as representatives of black, brown and white Americans who are starving and are outcasts in this land of plenty.

We come to tell you that poor people want a decent place in which to live. The housing goals of poor people are no different than those of other Americans. They want a decent home at a reasonable price. They want a choice of housing type and a choice in its location. They want to live in a neighbor-

hood where their families can live in dignity, with good schools and other good services.

We tell you about our needs and our dreams, because there is little evidence that HUD is aware of them. We ask you to listen to us, the poor, as you have listened to the builder, the banker and the bureaucrat. We think it is time that programs reflect the real needs of America's ill-housed millions. The nation pledged itself in 1949 to decent shelter for every American. This pledge has resulted in a decent home for every white middle-class American, but not for the poor of any race or group. We think it is time that the poor get more than apartments or rented houses in neighborhoods which are crowded and rundown, in places where nobody would choose to live.

Existing programs for housing poor people are totally inadequate.

Thirty years of public housing have produced only 650,000 units; most of it drab, barracks-like and segregated. Four million urban families live in substandard housing.

The urban renewal program remains a clumsy, unresponsive and brutal process. Instead of aiding poor people, it has become their enemy. Urban renewal has meant removal of the poor, removal of minorities. It has meant vacant and unused land and housing deterioration.

HUD programs for the poor push them into core city areas where land is expensive and race and class segregation is intensified, where schools are inadequate and jobs are disappearing.

HUD must remember that its mandate is to assist all Americans in their quest for decent, safe, and sanitary housing. National policies must reflect that concern. Therefore, we demand that, within its existing authorities, HUD:

1. Move aggressively to increase the rate at which localities are buying, building and leasing housing for low income families. Despite the new "turn-key" and leasing arrangements, only half as many units are being built or leased as have been authorized. HUD, in Washington and in the regional offices, must vigorously promote low income housing with local authorities and change its own procedures to help facilitate the programs.

2. Recognize that poor people be involved in the planning process of programs which are designed to help them. So far, citizen participation in planning has been a fiction, both in city-wide and neighborhood programs. Citizen groups must not be chosen by local officials but be designated by the residents of the areas involved. Citizen groups must represent the geographic, racial and economic areas affected by the programs.

Poor people also must be represented on the boards of housing and redevelopment authorities.

3. Require that poor people be employed at prevailing or minimum wages, whichever is greater, in the work to be done under the Model Cities program. In addition, we demand that HUD support the amendment to the Senate Housing bill which requires that poor people be employed in the construction and rehabilitation of low income housing to the greatest extent feasible. If enacted, HUD must design enforcement machinery that will bring poor people and contractors together in the business of supplying housing.

4. Enforce forcefully the nondiscrimination requirements that were enacted in the Civil Rights Law of 1964 and the new Fair Housing Act of 1968. Continued failure to implement Federal promises to minority groups will only intensify existing disenchantment.

5. Require that housing to relocate the displaced be available before approval of renewal programs so that renewal areas remain habitable until families are rehabilitated. The poor must not continue to bear the brunt of so-called "progress" in America's cities.

6. Press communities to use Federal excess lands for new communities, for new housing and job opportunities for the poor.

7. Undertake an aggressive recruitment program of hiring Mexican-Americans in *policy-making decisions* both in the Southwest and in Washington. A special unit should be created in HUD to recommend special housing programs for Spanish-speaking people—more realistically in line with their cultural habits and ability to pay.

8. Take affirmative action to bring Mexican-Americans knowledge of special low income housing programs. Also, more Mexican-Americans should be brought into FHA programs, such as Mortgage Brokers, Appraisers.

While HUD can make these changes *now*, there are changes which will take more time to plan, some of which will require legislative changes. We demand that HUD:

1. Draw up a Five-Year Plan for meeting the housing needs of the poor, specifying the programs, procedures, costs and timing necessary to house every poor family in standard housing.

2. Give sewer, water, planning, open space, and all other HUD grants only to communities which have a "fair share" of a metropolitan area's supply of low and moderate income housing.

3. Increase the relocation grants to families displaced by any program, Federal, state or local, by paying replacement value to homeowners and a form of compensation to renters for the inconvenience and hardships of living in a renewal area.

4. Abolish the requirement of a workable program which serves to obstruct and preclude worthwhile programs for low income and minority groups and encourage the financing of development corporations controlled by poor people to meet their specific needs.

DEPARTMENT OF JUSTICE

Despite the Civil Rights Acts of 1957, 1960, 1964, the Voting Rights Act of 1965, justice is not a reality for the black, Mexican-American, Indian, and Puerto Rican poor. Discrimination in employment, housing and education not only persists, but in many areas is rapidly increasing. So is disrespect for law because of weak enforcement. Large responsibility for this worsening crisis must rest with the Department of Justice and the lack of affirmative, vigorous enforcement of existing laws.

Specifically:

1. A token number of cases have been brought by the Department of Justice against labor unions and employers who discriminate in job training, hiring and promotions. Immediate, affirmative and massive efforts should be instituted by the Department to end discrimination in this area. Nor has this department supported private litigation against big industries where department intervention would substantially aid the outcome. We demand greater coordinated action between the Justice Department, the Equal Employment Opportunities Commission and the Office of Federal Contract Compliance to enforce Title VI and Title VII.

2. School segregation has grown rather than decreased in the last decade to further sap the hope of minority groups for equal chance and status in this country. Little, if any, attention and effort has been given by the Department of Justice to confront the deteriorating urban school crisis, north or south, and insufficient enforcement of school decrees in rural southern areas has resulted in snail-like progress in desegregation and quality education for Negroes and other minorities. We demand an affirmative and systematic litigation program against Northern and Southern urban school district segregation and that more suits seeking more affirmative relief be instituted in the rural South.

3. We demand rigorous enforcement of the housing provisions of the 1968 Civil Rights Acts. A new law without strong implementation is almost worthless and will lead to further disenchantment. A strong affirmative compliance program by the Department of Justice to implement fair housing is essential.

4. The Immigration Service should implement immediately and effectively the recent agreement to protect farm workers, particularly Mexican Americans, against green card strike-breakers. Specifically, a thorough investigation should be made of all strike-bound farm fields to determine that green card workers who have entered the country since strike-bound growers in the Delano San Joaquin Valley were certified—are not illegally employed. Moreover, we demand that Spanish speaking persons be employed in such investigations as promised.

5. The Department of Justice is charged with the responsibility of investigating and prosecuting cases of violations of Federal Civil Rights statutes by law enforcement officers.

Many instances of illegal jailings, brutal beatings and even killing of Mexican-Americans by the police have occurred in the Southwestern states. The investigations of these cases has been inadequate and there have been no prosecutions.

We demand that the Department of Justice commit a greater part of its resources to this area and prosecute those responsible for the deaths and beatings of Mexican-American farm workers in Texas and California.

The Department should also immediately investigate reported cases of police brutality on Indian Reservations, as well as initiate action to protect the hunting and fishing rights of Indians in Mississippi, Michigan, Oklahoma, Washington and Oregon.

DEPARTMENT OF AGRICULTURE

I. The existence of hunger and malnutrition in this country is an incontestable fact. The poor people who are coming to Washington are living witnesses of this fact. On April 26, 1967, the Senate Subcommittee on Manpower, Employment and Poverty, after hearings in Jackson, Mississippi, found "clear evidence of acute malnutrition and hunger among families in the Mississippi Delta"—families without discernable income and who could not afford to meet the minimum purchase requirements for food stamps. Distinguished doctors sponsored by the Field Foundation described shocking conditions of hunger and malnutrition among Mississippi black children. The Department of Agriculture's own staff admitted "evidence of malnutrition and unmet hunger." Almost a year later, April 1, 1968, the Citizens Board of Inquiry on Hunger and Malnutrition in the United States found "concrete evidence of chronic hunger and malnutrition" in every part of the United States where they held hearings and field trips.

That hunger exists is a national disgrace. That so little has been done in the past year by the Department of Agriculture to alleviate the known conditions is shocking. That approximately 300 of the 800 counties identified by the Department of Agriculture as among the *poorest*—continue without any food programs is inexcusable. We do not understand how in the face of such crying need, the Department of Agriculture could turn 220 million dollars back to the Treasury Department which by law could have been used to put food commodities in these counties where no program exists. We do not understand how the Department of Agriculture could use the $2.7 million under the Emergency Food and Health law to pay for administrative costs in counties where food stamps are in operation instead of using this money as agreed upon for food distribution in new counties. Because we know that the Department of Agriculture has the author-

ity to use Section 32 funds to supplement a food program in food stamp counties for those who cannot meet the cost of food stamps and to provide commodities in counties with no food program as it did recently in Elmore County, Alabama, we demand that it immediately:

1. Use Section 32 funds to institute food programs in the 256 counties without food programs which the Citizens' Board of Inquiry states are "areas so distressed as to warrant a presidential declaration naming them as hunger areas."

2. Provide free food stamps for persons who cannot afford to purchase them. Alternatively, we demand that the Department of Agriculture use Section 32 funds in food stamp counties to institute a commodity distribution program to provide for persons unable to purchase food stamps.

3. In counties where commodities are distributed, provide more and better commodities, institute a stepped-up program of consumer education and employ a larger number of community aides from the poor communities.

4. Implement the remaining recommendations of the Citizens' Board of Inquiry for alleviating conditions of hunger and malnutrition in the United States.

5. Immediately provide free and reduced lunch prices for every needy school child and take specific action to implement the recommendations of the recent National School Lunch Study, *Their Daily Bread.*

II. The number of Negro farmers in rural areas has declined radically over the last decade. The Department has done almost nothing to help Negro, Mexican-American farmers, and other poor establish cooperatives so that they can survive. We demand that the Department of Agriculture take massive and immediate action to assist poor farmers in establishing farmers' cooperatives so that they may be allowed to live productively on the land and not be forced to migrate to urban areas.

III. The Civil Rights Commission Report of 1965, "Equal Opportunity in Farm Programs," pointed up wide-spread discrimination in the implementation of Federal Agricultural programs, particularly the Farmers Home Administration, the Agricultural Stabilization and Conservation Service and the Federal Extension Service. The Commission also found that discriminatory patterns existed in the employment patterns of the Department itself. Little, if any, change has occurred in these conditions over the last three years.

We demand that the Department report on specific progress made in correcting the discriminatory practices documented by the Commission almost three years ago and present a timetable for correcting the remaining discriminatory conditions described in this report.

IV. The Department of Agriculture has been allocated 2½ million dollars by OEO of Rural Special Impact funds. However, the intent of the Special Impact Program is in large part not being implemented. We demand that the Department report on the use of these funds and state how their utilization is different from traditional manpower approaches and how they will alleviate conditions of poverty.

V. We demand that the Department of Agriculture declare its national policy to be to give farm workers the rights of collective bargaining with the government and with farm employees. In support of this policy we demand that the Federal Government (Department of Agriculture in particular) withdraw all subsidies, direct and indirect, contracts and services from farm employers who employ illegals or "green card holders" during a strike.

VI. The farm placement service has never been what it was intended to be by law—an agency to pursue and guarantee the job security of farm workers. It has been, and continues to be, however, an extension of power and influence of agri-business into the bureaucracy of government.

We therefore demand the Department of Agriculture and other Federal Agencies to cooperate with farm workers so that they may organize and administer cooperative labor pools. These pools would replace the farm replacement services.

VII. It is inequitable to pay large farmers huge amounts of Federal funds to grow nothing while poor people have insufficient amounts to eat. We demand that the Department of Agriculture abolish its annual acreage diversion policy which subsidizes large farmers while ignoring the poor.

HEW: WELFARE

The welfare program is immoral and disgraceful. It provides no help for three-quarters of the poor people.

Those who try the hardest to keep their families together, who try to help themselves, not only get the least help from the welfare program, but are actually frustrated in those efforts by welfare policies.

The Aid to Families with Dependent Children Program makes no substantial provision for families with fathers or where there is any breadwinner working.

Those people who do get help under the program get only a fraction of what is called the poverty level of income.

In most States families only receive a part of what the States themselves say the families need to live on. In Mississippi, a family of four receives a sixth of what the State says a family needs.

To get even that pittance from the welfare program, mothers and children are humiliated and harassed; their lives are pried into; their homes searched. Their welfare payments are denied, reduced or stopped for all sorts of arbitrary and irrelevant reasons. If they complain about this treatment, there is little chance of their getting any redress—without the help of a lawyer whose services they cannot afford.

Mr. Secretary, this has all been known for a long time. There have been studies and reports and recommendations of all sorts but there has been no action. When the Congress did act last year it was to make the program worse—with its compulsory work program for mothers.

Frankly, we are outraged that the Administration did so little to oppose those provisions.

We are outraged that the Administration seems willing to sacrifice needy mothers and children who are without power and defenseless to get a social security bill or tax bill. We think that kind of compromise at the expense of the weakest and poorest in our society is immoral.

Our goal is a decent job for everyone who can and should work and a guaranteed minimum income for those whose job does not pay enough to support their families or who cannot or should not work.

But in the meantime we call on the Administration to act now to remedy the worst aspects of the welfare program.

1. We call upon the Administration to endorse the fight for legislation in this session of Congress that would *repeal* the freeze and compulsory work provisions of the 1967 amendments; that would compel the states to assist families with unemployed fathers; that would require that minimum levels of assistance be paid and increase the amount of earnings that are expected; and that would establish a Federal standard of need pending development of a full income maintenance program.

2. While awaiting action on that legislation, we call upon the Department of Health, Education and Welfare to issue regulations that establish in what circumstances mothers can appropriately be required to work and that make clear that no mother can be required to work if there is no day care of minimal standards available for her children; if other programs to make her fully employable, including health care, are not available; or if the job to which she is referred does not pay a minimum wage or provide for decent working conditions.

3. We call upon the Department of Health, Education, and Welfare to simplify and humanize the welfare program by:

a. Moving to require only a declaration of facts to determine eligibility for assistance or changes in status. This can be subject to spot-checking.

b. Revising personnel guidelines to encourage the employment of recipients and other poor people for jobs working directly with recipients, including periodic visits that do not require professional social workers.

c. Hiring recipients and other poor people to help check up on the way the program is being carried out by the States and localities.

d. Requiring that recipients be involved in making policy and program decisions about how the program will be carried out by the States and localities.

4. In addition, we call upon the Department of Health, Education, and Welfare to:

a. Eliminate the infamous "man in the house" rule now without waiting for court decision. A petition for this action was submitted to the Secretary of Health, Education and Welfare more than two years ago and has never been acted on.

b. Require that lawyers be paid for on appeals from welfare decisions and that payments are to be continued until the appeal is decided.

c. Police more aggressively the enforcement of civil rights requirements and particularly press State and local welfare officials for the civil and courteous treatment of applicants and recipients and the uniform use of courtesy titles in addressing them.

5. We call for immediate steps to develop experimental income maintenance programs in rural and urban areas to determine what kinds of programs are most effective in reducing poverty.

These are by no means all of the things that we are concerned about in the welfare area. There have been many recommendations made in the past, notably by the Advisory Council on Public Welfare, the White House Conference "To Fulfill These Rights," and the President's Commission on Civil Disorders. We want to know what the Department has done or proposes to do about those recommendations. And we don't mean any more studies.

DEPARTMENT OF LABOR

Mr. Secretary, we come to you as representatives of black, brown and white Americans who are starving in this land of plenty.

We come to you because people who want to work can't find jobs.

We come to you because there is no indication that jobs will be created for these starving Americans unless the government acts.

Our request is not new. Although the Riot Commission, the Automation Commission, and countless other groups have written of the need for government action to create jobs, there is no indication that anyone in the US Department of Labor is listening.

We come to you with a direct request. We ask you to eliminate programs that try to fit poor people to a system that has systematically excluded them from sharing in America's plenty. We say that the *system* must change and adjust to the needs of millions who are unemployed or under-employed.

Government must lead the way as the employer of *first* resort.

Others have told you that the jobs which could be created will serve all society. The Automation Commission estimated that there are 5.3 million jobs in public service that would meet pressing social needs of the coun-

try and would, at the same time, provide permanent employment at decent wages for those who are now idle.

We know that the creation of these jobs requires Congressional action reflecting a national decision to do more than talk about the plight of the poor.

The Clark Bill, the Conyers Bill, and other plans currently before the Congress take steps in this direction.

We say that it is the responsibility of the Labor Department to testify before the Congress to the need for such programs and to admit to the limitations of existing programs.

Too, you should encourage private businessmen to become much more involved. This means that programs must be developed that offer realistic incentives to private employers. New funds must be appropriated and programs established that focus on the real problems of the poor. So far, many programs like the JOBS program—are little more than public relations gimmicks. The talk about business and government cooperation fails to mention that the program excludes people between ages 21 and 45 and that it is really a mixture of old programs, given a new name.

We recognize that there are limitations to your authority to act. But there are changes which you can make now:

1. Involvement of the poor in decision-making about manpower training and other employment programs. Programs will continue to fail because of your problem with "recruitment." These recruitment difficulties simply reflect the failure to involve those who will participate in the programs in the planning process. The Washington Pride program establishes the validity of the suggested approach.

Large grants of funds—like those given under the Concentrated Employment Program—cannot be channelled through traditional agencies like the State Employment Service. These agencies have not done the job in the past. Why should they get more money to continue to do a bad job? Secretary Wirtz testified before the Senate Subcommittee on Poverty, Manpower, Welfare that the 22 CEP projects should produce 150,000 jobs in January 1968. We understand that only 8,000 jobs were produced. We demand that the unmet number of jobs be obtained for the poor under the CEP program and the explanation of the Department for the disparity between performance and promise.

Programs must provide an opportunity for those who need the jobs to really communicate with those who can supply the jobs. Only in this way will we avoid the pitfalls of many existing programs. Poor people must be given a chance and must be trained to do a job. Training should not be wasted on trying to fit the poor into preconceived irrelevant models of workers.

2. Vigorous enforcement of fair employment regulations. Poor people from minority groups—whether they are Negroes, Mexican-American, Indians or Puerto-Ricans—continue to be denied access to jobs and to programs financed by the government because of their race, color or national origin.

Too often the government is crying "wolf". Contracts must be cancelled because of discrimination and lack of minority participation in any and all aspects of the contract. The Federal Government must require the specific employment of numbers of the poor in the area in which the contract is performed.

3. Revision of the Manpower Development and Training program. Our criticisms of the MDTA programs are not new ones. You know as well as we do that MDTA is not training people for *real* jobs at *living* wages. You must require on the job training with an absolute guarantee of a job after training is over. And you must pay higher stipends. Present stipends are often below the welfare payment that a trainee could get if he did not agree to enroll in the program.

MDTA projects are not coordinated within a community. Some MDTA projects duplicate other training programs. A rational strategy has not been developed to meet the needs of those who require training.

Instead of following the traditional craft union apprenticeship approach, the Department of Labor should develop new job categories and training techniques within all trades. We are particularly concerned about the Model Cities Program and others involving rehabilitation of housing.

As you know, the unemployment rates released by the BLS every month do not reflect the actual job situation of the poor. We know that many Americans are working and earning good salaries. But we as a nation do not know the status of the poor. Studies by the Labor Department itself show that the Employment offices do not have meaningful statistics in urban areas. For example, in one Texas city, 50% of the unemployed interviewed had not even been inside the Employment office. When you release statistics which minimize the unemployment problem, poor people are being cheated and the public is deluded.

HEALTH

We come here as spokesmen for the many Americans whose poverty does not stop at their pockets but shows up in the state of their health.

We come in behalf of the poor in rural areas, who experience an almost total lack of health care. And we come in behalf of the poor in the cities who can't get health services even if they are supposed to be available because of confusion and disorganization of these services.

We come to tell you that babies are dying, that children are starving, that people are suffering pain and disease—all because they can't afford to buy health. It is intolerable that the maternal mortality rate among black mothers is four times as high as among whites, that the infant mortality rate is twice as high among black babies as among whites.

We come to ask why the American know-how that can move a wounded Marine from the jungles of Vietnam to the finest medical care in minutes cannot and does not do the same for a sick child in the Mississippi delta or on an Indian reservation. We come to ask why a rich nation with the most advanced medical knowledge in the world can develop artificial organs yet cannot provide innoculations against disease to many of its poorest children.

We come to tell you that there are children in this country who have never been examined by a doctor or a dentist who might have grown up without serious disease.

We come to tell you that health services do not accord the poor the same kind of dignified and humane treatment that those who can pay expect and get, and that poor patients often suffer the humiliation of serving as guinea pigs—teaching material to educate doctors and dentists who will graduate into the service of the rich.

We come to tell you that the poor live in open contract with serious health hazards—rats and vermin; accumulations of waste and vermi—garbage; sewage lines and water lines so dangerously close that their contents sometimes mingle.

We come to ask that you use your authority, your money, and your influence to assure what the President has said Americans have the right to expect: "adequate medical care for every citizen."

DEMANDS

1. We demand that the Department of Health, Education, and Welfare require that states and localities using Federal grant funds establish a priority for the poor in health programs and that special emphasis be placed on creating services in isolated rural areas.

2. We demand that action be taken to expand Medicare to cover all the medically indigent in the United States; that, in the meantime, the definition of medical need under the Medicaid program be broadened to cover the needs of the medically indigent; and that services under Medicaid be immediately strengthened and extended.

3. We demand that action be taken to assure that poor people have access to presently existing health services—either through sending medical teams or mobile health units into rural and urban areas or by providing the poor with transportation to health care.

4. We demand strong and vigorous enforcement of civil rights legislation as it applies to hospital admissions; to staff privileges.

5. We demand that all necessary steps be taken to bring health services to the poor where they live through comprehensive neighborhood health centers and that health agents be assigned to help poor people through the maze of complexity that separates them from available health service.

6. We demand that the Department of Health, Education, and Welfare require of grantees that poor people be included in planning bodies under the comprehensive health planning and medicaid programs which have provisions for citizen membership on their planning boards and that Department funds now available should be used to train people to take part in these programs.

7. We demand that the Department of Health, Education, and Welfare join with the Department of Agriculture and OEO to obtain the full authorization of $25 million provided for the Emergency Food program this year; and that when a health worker indicates that people are undernourished they should be eligible for support from a continuing food program.

8. We demand that the Department create a sanitation program to help poor communities rid themselves of rats, obtain safe and adequate sewage and a clean water supply; and that poor people be provided with employment in these programs.

9. We demand that the Department implement the authority it now has to organize centers for delivery of mother and child health services in low income areas; that special efforts be made to reach out and identify mothers and children in need of these services; and the proper nutritional services and food provisions be available through these centers.

10. We demand that the broad training authority of this Department be tapped to train poor people for jobs to improve health care among the poor and to help meet the severe shortages of professional manpower that hurt the chances of the poor to receive decent health care.

CLAIROL PROVIDES COMMUNITY LEADERSHIP

Mr. RIBICOFF. Mr. President, the problems of our cities cannot be solved by Government action alone. The genuine concerted efforts of all our citizens will be required. The corporate members of the business community have a particular opportunity and responsibility to provide the leadership which is so greatly needed.

I invite the attention of the Senate to an outstanding example of corporate leadership by a company based in my own State of Connecticut. Clairol has long proved itself a corporation with a social conscience. In 1962, it initiated a teenage leadership program working with local schools, social service agencies, and city

recreation departments. It has provided grants for low-income housing. It sets an example in the hiring of employees from minority groups. It has initiated programs to encourage young men to stay in school.

Mr. President, the Clairol experience is an outstanding example of how business and Government can work together on the great problems facing America today.

I ask unanimous consent that the text of my remarks at the opening of a new Clairol facility at Stamford, Conn., on May 13, 1968, be printed in the RECORD at this point.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS BY SENATOR ABRAHAM RIBICOFF OF CONNECTICUT, AT THE OPENING OF THE NEW MANUFACTURING FACILITY OF CLAIROL, INC., AT 1 BACHLEY ROAD IN STAMFORD, CONN., MAY 13, 1968

I want to talk to you today about one of the most revolutionary forces in our country: the American business community.

You probably find the label startling, to say the least. For business is generally regarded as a highly conservative institution—skeptical about large changes.

But history tells a different story. It tells us about the restless spirit of the American entrepreneur, the American businessman who insisted that we could do better—and do better faster—if only we could explore and develop the vast potential of this great land.

Businessmen went to work to build this country and they changed everything. They changed the products that we bought and used—the houses we lived in—the jobs we worked at—the transportation that expanded our horizons.

The results have been fantastic. In less than 200 years, we have developed the strongest and most rapidly expanding economy and technology the world has ever seen. We have given concrete shape to the hopes and dreams of all mankind.

As the business community built the economy, it also brought the American people to a standard of living new to the world. *It is rewarding* the loftiest hopes of the common man and raising the nation to new plateaus.

But somehow, in the rush forward, we either did not see—or did not want to see—the sector of our society that was left behind.

In short, *society* abandoned the poor. They filled the hand-me-down homes of the workers of the early part of this century and took whatever jobs were left. And now they live on depressed economic and social islands surrounded by oceans of plenty.

Their islands are erupting with unemployment, poor housing conditions, poor health—and violence.

Obviously, the poor are victims of the tyranny of these conditions. But partners in this distress are the cities and the American business community.

As the environment declines, the cost of doing business increases. In many ways—complex and subtle beyond calculation—the effects of poverty and decay are ultimately felt by every person and enterprise in our society.

Many business leaders have noted industry's unique capability to be a major contributor to urban rehabilitation.

But there are obstacles—this is not an easy task. And the problems will become more difficult the longer we wait.

Fortune magazine said in February: "The nationwide sluggishness and ineptitude in dealing with changes does not apply only to government agencies. The universities and the whole intellectual community have not been much interested in the problems of the city. American business, busily generating change, has in main stood apart from the responsibilities—and the opportunities—of coping with the community needs that arise from change."

American business would train the "untrainable" and relocate and expand its operations in the cities if doing this would be advantageous—and if it were assured it would not lose any money.

Business cannot be expected to take such a gamble. For it to lose would defeat the purpose of the commitment of the free enterprise system to the urban crisis.

Business must receive incentives and assurances and the clear understanding that Government—be it Federal, State or local—is willing to do its share and fulfill its commitment.

Business has a responsibility to its stockholders and present employes that it must meet. We cannot ask the private sector to undertake a commitment that the public sector either has not made or has made half-heartedly.

But the concept of a partnership of Government and business never gets beyond the talking stage.

We know the problems. Our rhetoric, with such phrases as "the urban crisis" and "hard-core unemployment" is a sign of our understanding of the basic issues with which we are dealing.

But too often our rhetoric becomes the cliches of crisis and the shibboleths of delay.

One of the heartening aspects of Clairol and why I am so pleased to be here today is this company's social conscience. Truly, Clairol is a leader in the corporate community in responding to the demands of the problems of the city.

Long before many of us were talking about the urban crisis—long before the first major riot called our attention to the plight of the poor—Clairol was reaching into the ghet' s of the nation with a program.

In 1962, for example, this company began its Teenage Leadership Program. Working with local schools, social service agencies and city recreation departments, Clairol provided a platform of development for young girls in the inner cities.

Through a simple format of discussions about issues that are of concern to young girls, Clairol has given hundreds of girls new hope and self confidence they might not otherwise have.

Today, we see Teenage Leadership programs in 20 American cities including Stamford and soon in Hartford. And we also see, growing out of this imaginative corporate community relations program, partnerships with local government.

Through innovations such as this, business, as has Clairol, can provide some of the leadership.

We must assess what solutions business, government and the poor can bring to the problem area. Business obviously has some jobs available, but they are generally skilled jobs. The inner cities are sources of new employes but too often the individuals are unskilled or difficult to train.

But providing employment to the vast resource of labor which in turn would create a new market—new consumers—is well worth the effort and money. For programs to develop our cities are not—and should not be regarded—as holding operations. They are investments with social rewards, to be sure, and they are realistic capital investments with immediate short term and lasting returns not only to employers, but to the Government and local and national economies.

Clairol has made such an investment. Earlier this year the company gave a $22,000 grant to the New Hope Corp., which is building a 90-unit apartment cooperative for low income families in Stamford. The grant itself was channeled through the Stamford Development Corporation, an organization of banks and industries in the area which seeks to help nonprofit groups sponsor housing projects for low and middle-income families.

The grant allowed New Hope to buy the land. Ownership of the property, in turn, made a Federal Housing Administration mortgage loan of $1.6 million possible.

Here we have an example of private enterprise working with community groups and Federal Government programs to improve the city and the conditions in which people live.

Each sector of our society, therefore, has important contributions that it can make and that it must be free to make. The issue is how to organize the resources we have—and begin to do the job. Government must do what it can do best; business, what it can do best; and they must develop a working relationship.

We cannot rehabilitate our cities unless we also begin to rehabilitate people. New structures, do not make a society. Only the attitudes and the spirit and the desires of men to promote a change for their own betterment can do this. Poor people not only need skills—they want them. They want to prepare themselves for jobs so that they might be able to stand on their own feet.

Many plans have been proposed to improve the position of the poor. Some suggest a guaranteed annual income. Others advocate a negative income tax. But I am against both of these. I prefer a program of guaranteed job opportunities tied to plans to train and upgrade workers. Providing jobs increases both the income of the individual and the income of the society.

Government and business cannot fall back to finger-in-the-dike programs such as the welfare approach. Nor can we be deterred from our task by letting our view of the poor be clouded by the spector of the urban rioter.

For every hoodlum on the streets of America, there are hundreds of law-abiding persons who are unemployed or who are working at jobs beneath their capacity.

To avoid the problems today will mean more expensive and complicated programs tomorrow.

The result of Clairol's experience is testimony to what can be accomplished. The company provides a variety of programs for its 1,200 employes in Stamford. A full 25 percent of all employees are from minority groups, whis is about twice the proportion of minority group members to the total population of the city.

This is a good record—a strong record—in itself. But Clairol is not a Johnny-comelately to providing equal opportunity employment. Clairol has had this policy long before many other companies announced they were equal opportunity employers.

Finally, Clairol, I understand, is involved in a new program, a pilot program to encourage young men to stay in school. Working in cooperation with the Stamford Education Department, Clairol hired a young man who was about to drop out of school. The company gave him a job with the condition that if he stayed in school he could keep the job. This young man has stayed in school and he will graduate in June.

The company has taken an interest, in a small way in this case, but in an important way. One boy was helped and maybe there will be more in the future. He was given a chance.

When a man has a chance to earn his own way, he has more self respect. And self respect is the basic ingredient of a healthy society.

Here we have a chance to get Government and business together.

There are actions the Government can take.

A Federal program of loans and guarantees to private borrowers and lenders could generate a movement of private industry back to the central cities. A ten-year sum of $30 million, used to reduce interest costs to private borrowers, could generate $2.5 billion of private investment.

And a capital reserve fund of $100 million in Federal funds could generate $2 billion worth of private loans. I have introduced legislation in these areas.

But the involvement of the private sector requires more than direct Federal loans, interest rate rebates and loan guarantees. As practical members of the business community, you know that all of your good intentions coupled with all the good intentions of Government will not create job opportunities if there are no trained men and women to fill these jobs.

Government can help there, too, by providing a tax credit against the direct costs of training and basic education courses conducted by private business. And this is part of my legislative program for the cities.

But the Government action can never replace private enterprise. And in the last analysis, only the initiative of business can create the cities industry market. Government can establish the proper climate. Government can be a customer.

But the actual decisions—decisions to build a plant, hire workers, develop a new product or new techniques—must be private decisions freely arrived at by American business.

Our new era requires a new partnership between government and business. But that partnership demands that business be a leader, both economically and socially, in rebuilding our cities. For as the distinguished Swedish Observer of America, Gunnar Myrdal, has said:

"Never before in the history of America has there been a greater and more complete identity between the ideals of social justice and the requirements of economic progress."

THE MARCH ON WASHINGTON

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD the following items:

An article entitled "1,000 Put Up at Coliseum; Second Campsite Sought," published in the Washington Sunday Star of May 19.

A UPI article entitled "Abernathy Starts Caravan on Way From New Mexico," published in the Washington Sunday Star of May 19.

An article entitled "Over 80 Cases of Beer Stolen at Coliseum," published in the Washington Evening Star of May 20.

An article entitled "Campaign's Leaders Map First District of Columbia Protest Rallies," published in the Washington Evening Star of May 20.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Sunday Star, May 19, 1968]

ONE THOUSAND PUT UP AT COLISEUM—SECOND CAMPSITE SOUGHT—MIDWEST UNIT IS DIVERTED IN EMERGENCY

(By Charles Conconi)

The Washington Coliseum was turned into a temporary second campsite for more than 1,000 members of the Poor People's Campaign last night as their leaders struggled with a critical housing shortage.

The campaign leaders began negotiations yesterday on the second permanent campsite, to supplement the one in West Potomac Park.

"We've still got money problems, but we're moving on," said the Rev. Andrew Young, executive vice president of the Southern Christian Leadership Campaign as he led the Midwestern leg of the campaign into the Coliseum shortly after 9 p.m.

The midwesterners, about 800 demonstrators in about 15 chartered buses, arrived at Resurrection City in West Potomac Park about 8:15 p.m., got off their buses, and then boarded them again for the trip to the Coliseum at 3rd and M streets NE.

Meanwhile, at the park site, about 1,500 marchers listened to a rock 'n' roll concert near the Reflecting Pool.

LIMITED TO 3,000

The site can handle 3,000 persons under terms of the permit granted by the U.S. Park Service. But 5,000 marchers are expected in town by the end of the week, and construction of the park housing is proceeding slowly because of a shortage of materials.

Throughout the afternoon yesterday, officials of the Southern Christian Leadership Conference met with area church leaders to set up guidelines for handling the busloads of marchers flowing in. A caravan from the South is on the way, in addition to campaigners already here.

The group moved into the Coliseum included several hundred who have been staying at churches in the District and the suburbs.

WANT TO STAY TOGETHER

One church leader said most of the churches had informed SCLC much earlier that they were unable to house demonstrators for periods longer than two days.

A large location was necessary, he explained, because most of the marchers had traveled great distances together and wanted to remain together.

The meeting with SCLC leaders was held to establish some coordination, he added. "We don't want them dispatching people unless they are cleared, know where they are going and have somebody in charge of them."

The church official said they wanted to avoid the problems created at Saints Paul & Augustine Auditorium at 1715 15th St. NW last week when a group from Chicago, including members of a militant street gang moved in.

DRINKING CITED

"We had to scrub it (the auditorium) all down," he explained, "and we did not tolerate the drinking that was going on and got rid of them all (the Blackstone Ranger, gang members and other youths)."

He said the church leaders are willing to help, but "we don't want the Blackstone Rangers."

Unclear at this time is whether SCLC will be able to come up with the necessary funds and materials to step up construction of the plywood city in time to get marchers out of homes and churches in Prince Georges, Montgomery and Fairfax Counties.

The group of church leaders met with the Rev. Walter Fauntroy, city council vice chairman and SCLC's top Washington official, on the housing problem.

After the meeting at the District Building Fauntroy said seven Prince Georges churches where the demonstrators had been staying had informed SCLC that the marchers could not spend the night in their structures because the buildings would be needed for services today.

About 900 persons were with the group when it came to the city and an estimated 200 demonstrators were moved into the campsite late yesterday afternoon.

Fauntroy said SCLC and the city and federal governments were very concerned about the immediate housing problem. The problem of continual feeding of the demonstrators was also discussed at the meeting, he added.

The church leaders refused to comment when they left the meeting, but some had expressed concern earlier about the health and sanitation problems created by demonstrators living in the churches.

CHURCH CONCERN CITED

"We are concerned about what will happen if churches have to take in so many people. The city and the federal government will have to face up to the problem," one church leader said.

Several SCLC staff workers took over a meeting room outside the city council chambers to continue working on details. Anthony Henry, the Washington campaign coordinator, was heading the group.

Mayor Walter E. Washington revealed at the District Building that he had conferred earlier in the day with Atty. Gen. Ramsey Clark on the housing problem.

He said he was trying to assess the number of campaigners that will be in Washington in relation to SCLC's ability to handle them.

The mayor would not give an appraisal of the situation but added that he and Clark felt the housing situation was under control and going well. There are no reports to the contrary "at this time," he added.

As of noon yesterday, SCLC reported, enough structures to house 946 residents had been completed at the campsite. Campaign leaders said they hoped to have facilities to house 1,800 by nightfall, perhaps under canvas.

The late afternoon population of the camp was reported at 800, and workmen continued hammering away at the plywood and plastic A-frame structures. Others were flooring the two circus-type dining tents.

CARAVANS ARRIVING

Even while the work continued and leaders from throughout the community struggled with the acute housing problem, major caravans continued to descend on the Washington area.

The Midwest caravan that arrived last night had been delayed in Pittsburgh and then again yesterday in Baltimore, but moved on late yesterday.

Coming up from Richmond today is the Southern Caravan that set off May 6 from Edwards, Miss. It was scheduled to stop in the Virginia suburbs.

In Fairfax County it was revealed that marchers might be housed in Fairfax Unitarian Church, Oakton; Mt. Vernon Unitarian Church, south of Alexandria, and St. Luke's Catholic Church, McLean.

Fairfax County officials and church leaders met Friday to discuss the problem. County Executive Carlton C. Massey said later:

"County officials anticipate no difficulties in connection with this program, are endeavoring to keep informed on all aspects of it and are prepared to do whatever may be necessary in the interests of the residents of the county and those traveling through the county."

At the campsite, an SCLC official reported that the medical units parked there had examined 387 persons and the dental unit, 38. Ten dental extraction cases were sent to Freedman's and D.C. General Hospitals.

To keep the demonstrators busy during the off hours, officials started a schedule of entertainment that began last night at a special stage constructed at the Lincoln Memorial end of the Reflecting Pool.

Last night's concert featured Muddy Waters, a Chicago blues singer, and B. B. King, a rock 'n' roll group.

Informal religious services were scheduled for this morning and more entertainment by various local singing groups in the afternoon.

NO TARGET DATE

Tom Offenberger, SCLC's press spokesman, said yesterday there was no target date for completion of the shack city, but that "work is proceeding as desired." He admitted more money and materials are needed, but was

uncertain if additional aid would be coming. He emphasized SCLC would have to accommodate 5,000 demonstrators by the end of the week.

When asked if more volunteers were needed, Offenberger said there was no lack of volunteers, but a lack of skilled workers, especially carpenters.

When asked about confusion that grew out of a statement from the Rev. Bernard Lafayette, national campaign coordinator, that $3 million was needed for completion of the camp, Offenberger said the figure included such costly items as transportation, food and housing.

Lafayette also said "at least one million" marchers would participate in a massive Memorial Day demonstration May 30.

Keeping the marchers occupied as they awaited transportation from suburban churches has been a major problem.

It was particularly evident at Regina High School in Prince George County where about 150 of the demonstrators from Philadelphia spent Friday night sleeping on blankets on the gymnasium floor.

Several of the older people in the group complained of teenagers making noise and creating disciplinary problems.

ROAM SCHOOL GROUNDS

They spent yesterday roaming the spacious school grounds, playing football and baseball or just sitting around. Several of the campaigners said they hoped to spend the night in Resurrection City.

A similar situation was evident earlier this week when an unscheduled group from Chicago moved into St. Paul & Augustine Auditorium at 1715 15th St. NW.

At one point a group of grumbling youths, anxious to get to the campsite, sat on the steps of the building drinking from a pint of gin. The auditorium was in disarray with papers and spilled coffee and milk on the floor.

Youths were wandering around aimlessly asking nearly everyone looking the least bit official if he or she was from SCLC and what was happening.

The Chicago group reportedly included a number of members of the Illinois city street gang of tough militants known as the Blackstone Rangers.

The Blackstone Rangers quickly tired of waiting for SCLC staff workers to register them and made their way to the campsite on their own. By early yesterday a block of structures was taken over by Rangers.

[From the Washington (D.C.) Sunday Star, May 19, 1968]

ABERNATHY STARTS CARAVAN ON WAY FROM NEW MEXICO

ALBUQUERQUE, N. MEX.—The Rev. Ralph Abernathy said yesterday at the beginning of one segment of the Poor People's March that if the government refused to do anything about the poor's problems, the people would "rise up and change the government."

(A shortage of money for transportation threatened to end the caravan the Associated Press reported.

(Three buses needed for the trip would cost $9,000, according to a leader of the group. The Southern Christian Leadership Conference has supplied $5,000 and the group has raised $2,400, he said, adding that if the conference does not raise the remaining amount, the entire trip may be canceled.)

Abernathy, head of the Southern Christian Leadership Conference, spoke to a crowd of about 800 at Albuquerque's Old Town Plaza.

Southwest march chairman Reies Tijerina—who said the Albuquerque march had not succeeded because "we have too many enemies in the news media"—and Chief Mad Bear Anderson of the Tuscarora Indian tribe also spoke to the crowd.

The speeches climaxed a 2-hour, 4½-mile march by more than 700 persons from Albuquerque's poorer southwest section through the downtown area to Old Town—site of the original city.

There were no major incidents during the march but one television newsman said he was deliberately kicked by one of the marchers.

About 150 of the march participants arrived Friday from El Paso, Tex., and were joined by approximately 156 New Mexicans. The group left for Santa Fe after the Old Town rally and scheduled a brief rally in Santa Fe enroute to Denver.

Abernathy, dressed in blue jeans, said the white man in America was "running scared because we've got a thing going."

"The red people, white people, brown people, black people, all the poor people in this land have got Charlie (white persons) scared to death. Charlie wants us to turn to violence but we won't," Abernathy said.

He said New Mexicans pay U.S. Sens. Clinton Anderson and Joseph Montoya, both Democrats, $32,000 a year to draft legislation.

"If they don't know how to write them (bills) then we ought to get them out of the way and let people in who will. If the government won't do something about the problems of the people, the people will rise up and change the government," he said.

Among the marchers was the Most Rev. James Peter Davis, archbishop of Santa Fe, and the Most Rev. Joseph Ryan, archbishop of Anchorage, Alaska. Ryan was here for a meeting and was invited by Davis to participate.

Abernathy said as soon as he arrived in Washington, the people already at the campin at Resurrection City would elect a mayor and council and he pleaded for funds to help finance the Washington demonstration.

"We will stay there until something is done about the problems we face," he said. "They say if we start any civil disobedience they will put us in jail. Well, I'm not afraid of jail. I've been there many times in the cause of freedom."

[From the Washington Evening Star, May 20, 1968]

OVER 80 CASES OF BEER ARE STOLEN AT COLISEUM

More than 80 cases of beer were reported stolen and a $15,000 sound system apparently was damaged while 1,000 marchers were staying at Washington Coliseum Saturday and yesterday.

The beer was missing from one of six locked storerooms rented at the auditorium by Sportservice, Inc., a concessionaire. The other rooms, along with about 10 dressing rooms, also were broken into, but nothing was reported stolen.

During the stay by the marchers in the Poor Peoples Campaign, someone broke the lock on the control room and turned on the sound system well above normal volume, it was reported. The amount of damage had not been ascertained by early today.

Piles of trash and old food were also left strewn through the auditorium which had been donated for temporary campaign housing.

Several marchers joined Coliseum personnel in sweeping up the rubbish.

The marchers, from the Midwest contingent, spent Saturday night at the Coliseum and went to Resurrection City yesterday. The Rev. James Groppi, the militant Milwaukee Catholic priest, was with the group.

[From the Washington (D.C.) Evening Star, May 20, 1968]

CAMPAIGN'S LEADERS MAP FIRST DISTRICT OF COLUMBIA PROTEST RALLIES—BOLLING FIELD MENTIONED AS SECOND CAMPSITE

Leaders of the Poor People's Campaign met again today on plans for the first mass demonstrations by their followers, who now number about 2,500 in the Washington area.

The critical housing shortage at the Resurrection City campsite on The Mall was eased temporarily by a Sunday of feverish construction activity by volunteers. The population of the camp nearly doubled yesterday, and some 2,000 campaigners are now housed in the plywood huts.

But with an additional 3,000 demonstrators expected before the end of next week, it became clear that an additional campsite would be necessary. About 400 marchers for whom there was no room at Resurrection City are being put up at 15 nearby Virginia churches, where they will stay until Wednesday.

ANACOSTIA MENTIONED

A possible second campground that has been mentioned is Bolling Field in Anacostia, although the Rev. Ralph David Abernathy said the leaders would prefer something closer to the Capitol Hill and downtown targets of the march's lobbying efforts.

Abernathy, chairman of the Southern Christian Leadership Conference, returned to Washington yesterday from a nationwide fund raising tour. He presided at an early morning strategy meeting in the Pitts Motor Hotel in the 1400 block of Belmont Street NW.

The meeting lasted for two and a half hours. Participants would not reveal immediately what came out of the meeting except to say that "some important decisions" were made.

Involved in the discussion were: Bayard Rustin, director of the A. Philip Randolph Institute and an organizer of the march on Washington in 1963; the Rev. Wyatt Tee Walker, former Southern Christian Leadership Conference aide and now urban affairs adviser to New York Gov. Nelson A. Rockefeller; Norma Hill, a Rustin assistant; the Rev. Andrew Young, executive vice president of SCLC; Anthony Henry, a director of the campaign; the Rev. Jesse Jackson, national director of Operation Breadbasket, a selective buying adjunct of SCLC; and the Rev. James Bevel, an aide to Abernathy.

HILL ACTIVITIES PLANNED

SCLC staff members continued discussions today although Rustin and Hill were reported on their way back to New York.

Rustin was asked by SCLC leaders to organize and coordinate the one-day demonstration currently planned for May 30. He is expected to announce his decision on the SCLC request later today.

Young said that the meeting last night also dealt with the administrative structure of the tent city and integrating the SCLC staff with the poor people. He added that the meeting also focused on getting additional people into Washington.

Young said the group would begin some kind of activities on Capitol Hill this week. He said he wasn't concerned about the ban on large demonstrations at the Capitol because House Speaker John McCormack, D-Mass., "has promised to protect the demonstrators' right to petition."

"We might march to the Capitol," Young said, "and then break into smaller groups and have the demonstrators go visit their own congressmen.

"When we move, we will move," he added.

The Sunday afternoon rainstorm caused the leaders at the campsites to call off a demonstration that was planned as a parade from the Lincoln Memorial area to the Capitol and back.

FACE SEVERAL PROBLEMS

Under the permit granted by the National Park Service, only 3,000 demonstrators can stay in the campsite by the Reflecting Pool, and this number appears likely to be reached in a matter of days as construction continues and caravans roll into the city from all directions.

Housing is not the only problem faced by the SCLC leaders. But leaders voiced optimism about the financial squeeze the cam-

paign is in, and discounted speculation that their control of the protest will be made harder by the growing number of militant youths among the latest contingents to arrive.

Volunteers worked all day Sunday and into the evening putting together the A-frame structures, which now number about 500. Buses shuttled between The Mall and the Washington Coliseum throughout the day, bringing over the 1,000 marchers of the Midwest contingent who had been housed in the sports arena Saturday night.

SPIRITS BUOYED

The arrival of Abernathy and the other "top brass" of the campaign appeared to buoy up the spirits of Resurrection City residents. "Now we'll get down to business," was the feeling expressed by more than one demonstrator.

During last week's delay and confusion as the campaign faced a financial crisis and construction lagged at the camp, several of the demonstrators were heard complaining that they came to demonstrate and not sit around in some church basement waiting for housing.

When asked about the housing problem, Young said that if people need housing and there is land available, "we will use it."

He added that he wasn't concerned about opposition from Congress if the demonstrators attempt to move into neighboring parkland because "Congress has to operate on its own logic."

Standing at the muddy campsite that had been hit by a rough rainstorm earlier in the day, Young refused to be concerned about reports that tough militant gangs from Memphis, Chicago and Milwaukee had taken over the city.

He said SCLC had brought many different people from vastly different places and backgrounds and over the next two days would begin trying to build a community.

"We have to mold the people into one disciplined, nonviolent fighting unit," he explained.

In an interview at National Airport, Abernathy also discounted reports that young militants were attempting to seize control of Resurrection City.

"The last report I received was that the Blackstone Rangers were serving as marshals and were helping keep things under control," he said.

Abernathy also discounted reports that the campaign was experiencing severe financial difficulties.

"There is no crisis," he said. "We still need funds, of course, and welcome more contributions. But I would say we have cleared up our problems."

THOUSANDS OF SIGHTSEERS

The rain, which dispelled fears that the shelters would leak or blow down, also delayed the construction and soaked piles of clothing and shoes that had come into the site from early in the day.

The storm also added to the general traffic tieup along Independence Avenue and around the Lincoln Memorial as sightseers came out by the thousands to catch a glimpse of the city.

In a brief talk with newsmen today, Rev. Jesse Jackson of SCLC, who has been named "mayor" of Resurrection City, said yesterday's rain and the resulting mud had demoralized some of the campers to a certain extent, and asked for donations of sand or gravel to "make the place for habitable."

More lumber and other building materials are also needed, Jackson said.

Asked about reports of differences among the campaigners, Jackson said there were "inevitably" certain problems, but he denied that factionalism was developing.

CULP AT CAMPSITE

Television actor Robert Culp and his wife, France Nuyen, appeared at the plywood tent city this morning and disappeared into one of the three big, circus-type tents on the grounds. Culp said he was working for Jackson, but he would not discuss details with newsmen. Of the three big tents, one is used as a mess hall and the others are used for recreation and meetings.

In various cities around the country, groups of demonstrators were poised for the move on Washington.

Three busloads scheduled to leave Buffalo, N.Y., last night were held back when the leaders were informed that there was no room for them in the capital. Revised plans call for up to 400 persons—10 busloads—to leave Buffalo May 29 for arrival in time for the Memorial Day mass demonstration.

About 500 participants in the march arrived in Kansas City late last night and early today en route to Washington.

KANSAS CITY RALLY

The marchers settled down at the American Royal building for several hours rest before a rally in Municipal Stadium.

A bus carrying 51 Indians and Mexican Americans from Oklahoma and Texas was the first to arrive. About dawn today 14 other buses arrived from Denver, Colo., bringing Indians, Negroes, whites and Mexican Americans assembled from various points including San Francisco, Los Angeles, Albuquerque, El Paso, Denver and Wichita.

From their Kansas City stop the marchers were scheduled to head for Columbia, Mo., where another rally was planned, and then on St. Louis.

A Pacific Northwest caravan reached Bismarck, N.D., yesterday in two buses. Most of the party were from Washington and Oregon cities, but they were joined by two white persons and 15 Indians at Missoula, Mont. A third busload of 15 to 20 North Dakotans joined the caravan at its departure for Washington today. Most of them were Indians from Fort Berthold, who want to press claims against the federal government.

REACTION IS MIXED

Reaction to the campaign continued to be mixed.

Senate Democratic Whip Russell Long said yesterday he would not knuckle under to "threats" by the poor people.

Referring to Abernathy, leader of the Poor People's March on the city, Long said:

"If he wants me to vote for something on threat of burning Washington down, then let him burn it down." The Louisiana Senator then said, "If the President and the federal government are not disposed to carry out the law, then maybe they ought to burn it down and move the capital to some state."

Long's remarks were made on the CBS television and radio program. Face the Nation. He emphasized he would be willing to listen to the poor people so long as they observed the law and petitioned Congress peaceably.

Long noted that Abernathy had stated that the SCLC would remain nonviolent during the campaign to persuade Congress to do more for poor people. Long also noted that Abernathy said the SCLC could not be blamed if other groups took advantage of the situation and became violent.

BAKER, BYRD SPEAK OUT

Sen. Howard H. Baker Jr., R-Tenn., in a report to his constituents, said he believes the consensus in Congress is that "there is a high degree of sensitivity and concern for the problems of the poor and disadvantaged—problems which must not be ignored—but that the Congress of the United States will not function with a pistol to its head."

In a speech to a lumbermen's convention at Boca Raton, Fla., Sen. Robert C. Byrd, D-W. Va., said leaders of the Poor People's Campaign "would have it appear that nothing has been done for the disadvantaged and the minorities in America."

But actually, he said, no government has ever done more for its citizens. "Since 1960, federal spending on programs benefiting the poor has reached the astonishing total of $138 billion," Byrd said.

Meanwhile the demonstration won the endorsement of Gov. Rockefeller of New York, who said in a television interview that he looked upon it "as a new imaginative way of creating a lobby, to bring attention to congressmen they have a problem, they want help."

The Americans for Democratic Action meeting in Washington, also endorsed the march and pledged a $1,000 contribution.

DEATH OF MORTON J. MAY

Mr. LONG of Missouri. Mr. President, the death of Morton J. May last week in St. Louis was an occasion of sorrow both in the city and throughout the country.

As a nationally known philanthropist, Mr. May was particularly active in Jewish activities. However, he gave to many others, as well. His greatest interest was in the National Jewish Hospital in Denver, Colo., which was cofounded by his father, David May.

David May, who had entered the merchandising business at Leadville, Colo., in 1876, saw the development of a chain of stores in many American cities before turning the family business over to Morton J. May in 1917. The younger Mr. May actively directed the company until 1951, when he in turn relinquished the presidency to his son, Morton D. May.

Most of Mr. May's philanthropic contributions were bestowed anonymously. For this reason it is impossible to establish the full list of charities which benefited from his activities.

Among organizations in the St. Louis area in which he was active are the Jewish Community Centers Association, the Louis D. Beaumont Foundation, the Jewish Hospital of St. Louis, the Municipal Theatre Association, and the St. Louis Symphony Society.

Morton J. May's dedication and service to his fellow man will be long remembered. I extend my deepest sympathy to his family.

Mr. President, I ask unanimous consent that editorials published in the St. Louis Globe-Democrat and the St. Louis Post-Dispatch, recognizing the contributions of Mr. May, be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the St. Louis Post-Dispatch, May 19, 1968]

MORTON J. MAY

In the death of Morton J. May, honorary board chairman of the May Department Stores Co., a nationwide chain that includes the Famous-Barr Co., St. Louis has lost a distinguished citizen and renowned merchant. Beyond that, it has lost a man whose many known benefactions to the city and its institutions contributed much to the life of the community.

The full extent of Mr. May's philanthropies is not generally known, but as Edwin S. Jones, president of the Chamber of Commerce of Metropolitan St. Louis, said, "enough were made public to make him a true humanitarian." One of his chief philanthropies was the National Jewish Hospital at Denver, of which his father was a founder. He was generous to St. Louis University and Washington University, both of which conferred honors upon him. In 1959, by Papal decree, he

was made a knight of the Order of St. Sylvester.

The $50,000 contribution to the St. Louis summer job and recreation program for young people made by the May company and Famous-Barr stores in memory of Mr. May is a fitting tribute to Mr. May and the ideals that motivated him. It is another contribution to human betterment, reflecting one of Mr. May's guiding principles.

[From the St. Louis Globe-Democrat, May 18, 1968]

MORTON J. MAY

Morton J. May, in his full life well lived, received perhaps more varied honors than any St. Louisian in memory.

It can be said in truth that all were earned.

This is the ultimate tribute to a good citizen whose goal was to be helpful to his fellow man.

He was an eminently successful businessman, civic leader and philanthropist.

His greatest success was as a human being, a noble champion of mankind.

He was good. He was honest. He was charitable.

Men who achieve great wealth frequently acquire as many detractors as they have dollars.

Not Morton J. May.

There is no one in the St. Louis community who had reason or occasion to speak ill of Mr. May. He was genuinely liked and respected by associates, employees and the thousands upon thousands of St. Louisans who either benefited from his generosity or admired him for it.

The gift of $50,000 to YOUTH, made by the May Department Stores and Famous-Barr Co. in memory of Mr. May Friday, is a fitting tribute to the companies' departed leader. The money will be allocated to the Health and Welfare Council to benefit youngsters.

Mr. May could not have had a more humble beginning. He was born in the mining town of Leadville, Colo., where his father, David, started out as a small store owner. Though David May was successful, Morton began as a stock boy.

His gifts amounted to millions. His favorite charity, understandably, was the National Jewish Hospital at Denver, which was co-founded by his father. This internationally famous institution has a motto, "None may enter who can pay—none may pay who enter."

Mr. May's own motto was, "There is no greater deed that we as Jews can do than help care for our fellow man."

Because he lived his motto, Mr. May was honored in return.

Mr. May was a substantial contributor to St. Louis University and Washington University. He also gave generously to Brandeis University at Waltham, Mass., which named him a fellow, and to Fisk University, a Negro school at Nashville, Tenn.

Most of his gifts were bestowed anonymously. Those who know say it would be impossible to name a charity which is not indebted to Mr. May.

One of the recognition he enjoyed the most was being named a Knight of the Order of Pope St. Sylvester, conferred upon him by the late Pope John XXIII.

Pope John referred to Mr. May as "a man of unblemished character who promoted the interests of society."

That he was. That he did. And that is why all St. Louis mourns the passing of Morton J. May.

CRIME AND THE MARCH ON WASHINGTON

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to insert in the RECORD the following news items:

An article by Jack Vitek, entitled "Will Buses Roll After Dark?" which appeared in today's Washington Daily News;

An article by Pamela Howard, which appeared in today's Washington Daily News, entitled "The Poor Plan Direct Action";

An article by Michael Bernstein from today's Washington Daily News entitled "For Busmen's Wives It's a Fearful Wait"; and

An article from today's Washington Star entitled "Poor Staging First March Here."

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Daily News, May 20, 1968]

WILL BUSES ROLL AFTER DARK?

(By Jack Vitek)

D.C. Transit and union officials are to meet today to try to break a deadlock over a driver safety issue that kept most buses off the streets last night and leaves the question of after-dark service tonight still in doubt.

Rush-hour service was reported normal this morning and transit and union officials said they expect it to be on par during the rush-hour late this afternoon.

After-dark service stopped last night when some 100 drivers refused to carry their "traps," money boxes for change. The "traps" usually carry from $50 to $100, money that has been tempting robbers at a furious pace this year. (There have been 233 bus robberies since Jan. 1, compared to a total of 343 last year.)

Transit officials said the 100 drivers were suspended for the refusal. The drivers said they were not going to carry "traps" under union instructions.

CALLED BAIT

The Amalgamated Transit Union asked the drivers to refuse their change-making boxes—normally $50 to $100—in an attempt to stop the ever-increasing robberies of bus drivers by removing the "money bait."

Evening rush hour service dropped 10 per cent yesterday after drivers began refusing cash boxes at about 3 p.m., company spokesmen said. They said services gradually tapered off until only 18 buses were on the streets at 11 p.m. when normally over 100 are in service.

Scores of our city's night workers found themselves stranded after long, confusing waits at bus stops for buses that never arrived.

Neither high union nor company officials would comment today on the course of the seven-hour talks that broke up shortly after 12:30 a.m., with Washington Metropolitan Area Transit Commission chairman George Avery joining in as a mediator.

But separately, both sides remained adamant in their positions. J. Godfrey Butler, senior vice president of D.C. Transit, said operating without change-making money would be the same as running a bus service for free. He said suspended drivers forfeited the night's pay.

WMATC chairman Avery, mediating the crisis in the city's interest, said altho there was no agreement last night, he hoped for one today "since at least things are not to the point where everyone is throwing up their hands and refusing to speak to each other.

Meanwhile, the Yellow Cab dispatcher reported calls from people stranded without buses had "overloaded" the company's night service, always in demand. "Everybody wants cabs," he said, "but cab drivers are like bus drivers. They don't want to work at night either."

THE POOR PLAN DIRECT ACTION

(By Pamela Howard)

The Poor People's Campaign will take its first "direct action" today with a pilgrimage to the grave of President John F. Kennedy, Rev. Ralph David Abernathy announced following yesterday's daylong strategy session with march leaders.

The surprise announcement came after the Southern Christian Leadership Conference chairman reported—during a strategy session break—that the mass march scheduled for Memorial Day may be postponed to mid-June.

Informed sources said Bayard Rustin, architect of the 1963 march, asked for more time to organize the kind of massive turnout envisioned—one million, according to SCLC spokesmen.

Fresh from his first night's sleep-in at Resurrection City, Rev. Abernathy today began with a series of meetings on Capitol Hill. He starts his confrontations on behalf of the Poor People's Campaign in the wake of an impassioned plea he made yesterday for non-violence.

The purpose of the campaign is not to burn Washington down, but "straighten it right," Rev. Abernathy told a huge crowd after he had taken a walk thru the muddy campsite.

"What we are going to do is sleep at night out here, but we are going to raise hell in the daytime," said Rev. Abernathy. "The enemy is not here, it is up on Capitol Hill."

Rev. Abernathy told the crowd that he is not worried about June 16 expiration of the permit for the West Potomac Park campsite.

"If they don't let us live in the Park here, we're going to the White House. If they won't let us live there, we'll move to Capitol Hill," Rev. Abernathy said.

Resurrection City dried out yesterday after Sunday's downpour. SCLC leader Rev. Jesse Jackson was named "mayor".

Actress Shelley Winters appeared at the campsite around 3 p.m. for a meeting with SCLC leader Rev. James Bevel. She expressed disappointment because neither Mrs. Abernathy or Mrs. Martin Luther King Jr. were on the site, but said she had come to wish the people well. She said she was in Washington for a luncheon.

Late in the afternoon, about 400 men, women and children from Yonkers, N.Y., led by a dozen clergymen held a prayer vigil at the Lincoln Memorial.

"We've come because we realize America is sick," Rev. Nathanial Grady told the group making a one-day pilgrimage to the site. "Prayer is the only thing that will heal her," Rev. Grady said.

FOR BUSMEN'S WIVES IT'S A FEARFUL WAIT

(By Michael Bernstein)

The group of D.C. Transit bus drivers' wives talked about their husbands leaving for work each day as if the men were going off to fight in some distant war.

"Every time my husband goes out that door I never know if he is coming back to me," said Mrs. L. D. May of Adelphi. "My husband has been robbed three times during the daylight hours. Now he won't even tell me what happens on the bus."

For one of the other 18 wives who met with Sen. Daniel B. Brewster (D. Md.) and Rep. Hervey Machen (R., Md.) yesterday to demand more protection for the drivers, her husband talks too much.

"It's in his conversation all the time," she said. "It's terrible when that's all they have to talk about."

Lately, tho, all the drivers have been talking about the robbery-shooting of John Talley, 46, who was killed near Dupont Circle early Friday. And as a result, one wife, Mrs. John Hull of Bladensburg, organized a group of women to press for more protection.

"We want an armed guard of some type to ride on all the buses day and night for an indefinite period," she kept telling the legislators. She and the other women said the additional 320 police man hours ordered after the shooting would do little to help the drivers.

"There was an officer within ear range of Mr. Talley," she said. ". . . policemen stationed in cars can't possibly help a driver when he's shot on the bus."

When someone mentioned reports that drivers are carrying guns, Mrs. Hull replied: "A driver is not supposed to be a driver and a policeman. They are not paid to be two people." (Minutes after the meeting started D. C. Transit officials said any driver found carrying a gun could be fired).

Sen. Brewster was very sympathetic to the women's cause—as was Rep. Machen—and he said he hoped Mayor Walter E. Washington will "ask for emergency appropriations to beef up protection."

Later, Deputy Mayor Thomas W. Fletcher was equally sympathetic, but not very encouraging.

"As for putting a guard on every bus, we don't have the manpower," he said. He also said that "there is no way troops could be used unless the mayor declares an emergency."

[From the Washington (D.C.) Evening Star, May 20, 1968]

POOR STAGING FIRST MARCH HERE: KENNEDY GRAVE VISIT PRELUDE TO MILITANT RALLIES—OTHER GROUPS SET TO ATTEND HEARINGS BY CONGRESS PANELS

The Rev. Ralph David Abernathy was to lead the first march of the Poor People's Campaign to Arlington Cemetery today to honor John F. Kennedy as a prelude to demonstrations he predicted will be "more militant and more massive than have ever taken place in the history of this nation."

With an estimated 2,500 campaigners now living in Resurrection City—and more on the way—officials of the Southern Christian Leadership Conference also planned to send groups of demonstrators to Capitol Hill today to attend several committee hearings and hear a speech in the House.

Abernathy, at a "town meeting" at the campsite last night, told the campaigners, "We're not going to burn it (Washington) down—we're just going to straighten it out.

WILL HEAR WATSON

"What we are going to do is sleep at night out here, but we're going to raise hell in the daytime," the SCLC chief said.

The Rev. James Bevel, SCLC's director of nonviolent techniques, said the Capitol Hill contingent plans to listen to a scheduled address to the House by Rep. Albert Watson, R-S.C.

Watson said he will disclose Communist involvement in the Poor People's Campaign in the speech to "give the American people an opportunity to judge for themselves whether there is an actual Communist or subversive conspiracy accompanying this particular demonstration and the general unrest existing in our nation today."

Bevel retorted "This is an empty stomach-inspired movement," and urged marchers to listen to Watson "to see how ignorant congressmen can be."

MAY POSTPONE RALLY

Abernathy said yesterday SCLC may postpone the scheduled massive demonstration now set for Memorial Day at which various campaign officials have predicted a turnout of 150,000 to 1 million.

The federal permit for Resurrection City expires on June 16, but Abernathy, during an afternoon tour of the site, said, "I'm not worrying about it expiring. If they don't let us live in the park, we'll move to the White House. If we can't live in the White House, we're going over to the Capitol."

Abernathy returned here yesterday after a nationwide fund-raising swing and presided at an early morning strategy meeting at the Pitts Motor Hotel, 14th and Belmont Streets NW.

In a statement later in the day, the successor to the slain Martin Luther King Jr., recalled that two weeks ago he led advance delegations of campaigners to a number of federal agencies, presenting cabinet officers with demands.

"We will be returning in the next several days to receive responses from the federal agencies to which we presented our requests for action," he said.

VIOLENCE RULED OUT

SCLC officials have reiterated that civil disobedience will be resorted to after Congress and the administration have been given a chance to react to the demonstrators' demands.

"We're not going to have any violence whatever," Abernathy told the town meeting last night, "because this is what the forces of evil want us to do. I want to ask you to remain nonviolent."

And referring to his "raise hell" comment, Abernathy said, "The real hell in this country is poverty, sickness, children in Mississippi suffering from malnutrition—that's the hell we're speaking of."

Abernathy obliquely answered consistent reports of financial difficulty by telling Resurrection City residents that money was coming in and showing the group checks, but he did not elaborate.

Earlier in the day, however, he admitted at a press conference that SCLC did not yet have sufficient funds to complete the city.

"We have a reservoir of good will in this country and that will provide the necessary funds," he added.

"BETTER BE FRIGHTENED"

At the same press conference, Abernathy was asked whether the "raise hell" statement might frighten area residents.

"They'd better be frightened," he replied, "that this country is going to burn" if nothing is done about poverty.

Meanwhile, about 400 campaigners from one of the Southern contingents were expected to move to the campsite of the Lincoln Memorial tomorrow from churches in Northern Virginia where they have been since Sunday night.

About 700 persons in the Western segment of the march arrived in St. Louis from Kansas City last night. The group was to leave for Louisville, Ky., today, arriving here Thursday.

A group of about 100 campaigners from the Pacific Northwest rolled into Minneapolis last night after a daylong bus trip from Bismarck, N.D.

The group was made up predominately of Indians. George Yellow Wolf, who joined the march at Bismarck, told a rally, "Our purpose in this march is similar to everyone's aims. We must be given an equal share in this country's wealth."

BETTER MEALS PROMISED

Visitors to the campsite yesterday included actor Robert Culp and actress Shelley Winters. Miss Winters said, "I came to wish the people the best and to hope that Congress listens to them and deals with the problems."

During his visit to the campsite last night, Abernathy asked residents how they liked their meals and said they would be getting better and that one day they would have steak.

"We're not going to pay a penny for it," he said. "We're going to go to the food stores and make them pay for it. If they don't we're going to boycott them."

The Resurrection City residents continue to lead a spartan existence as shower and laundry facilities have not been finished, and most of the campaigners have had to use buckets for bathing and laundry. Chemical toilets are being used.

FIVE HUNDRED SHELTERS ERECTED

About 500 of the A-frame, plywood and plastic shelters have now been erected of the 600-odd originally planned. The campsite permit restricts the number of campers to 3,000, and with up to 5,000 expected here eventually by SCLC, housing will continue to be a prime problem.

Tourists and the curious continued to clog the area around the Lincoln Memorial.

"All you visitors," shouted one marshal through a megaphone at one point yesterday, "we have all these old people down here with no snuff, pipes or tobacco like they're used to. We have set up a donation box by the gate. Please help us buy snuff and tobacco for our old folks."

Bevel said workshops in nonviolent techniques will begin today for camp residents. And, Bevel added, "when you see how ignorant a congressman can be, you'll start appreciating your own ability."

A delegation from the Poor People's Campaign was expected to attend a Rayburn Building hearing by the House Education and Labor Committee on malnutrition and federal food programs and possibly a Senate committee session.

Abernathy arrived at the camp at about 8:30 p.m. and visited with people who came out to shake his hand as he walked through the dark, muddy streets on his second visit of the day.

He kept repeating, "Bless your heart, so good to see you."

WANTS TO LEAVE

One older woman, Anna Mae Ray, of Marks, Miss., said she wanted to return home to the six children she had left behind. She had two children with her. Abernathy directed her to aides who promised to take her to SCLC headquarters and find her transportation.

At one hut, Abernathy and his aide, Bernard Lee walked in to visit a family watching a television set. Reporters were not permitted near the hut while Abernathy and Lee paid their short visit.

At the meeting described as the first town meeting of Resurrection City, Lee said that two similar meetings would be held each day.

Lee and J. T. Johnson, a top SCLC field organizer, led the group of about 700 persons in several handclapping freedom songs.

The smell of burning trash and wood was heavy at the campsite, with fires in several trash barrels. At one point a parade marshal rushed to a group of youths warming themselves at a large fire on the ground in front of a tipped-over barrel. The flames were dangerously close to some of the plywood huts.

ABERNATHY SMILES

Abernathy smiled widely as Lee and Johnson led the clapping crowd in such verses as, "No more Yessah Boss Over Me," and, "If You Are for Freedom Clap Your Hands."

Lee called for the singing of a hymn, "Sweet Hour of Prayer," and then told the crowd it needed God's protection because when the marchers leave Washington, "We gonna have to return home. They know all of us. Something divine is gonna have to watch over us."

Lee introduced Abernathy, who addressed his speech to "my black brothers and sisters, my white brothers and sisters, my brown brothers and sisters and my poor brothers and sisters."

He said he had come to dedicate the new city hall and to elect a mayor of the city. He was standing on a small wooden platform in front of the large structure built from sheets of plywood that will house the camp government.

A young Negro, apparently rehearsed in his role, stood and gave a brief speech

nominating Abernathy for mayor. Several seconds were shouted from the crowd, but then a white woman, also apparently precoached, came before the microphones to second the nomination.

IT'S OFFICIAL

Abernathy then shouted to the crowd, "Are you ready for the motion?" He was answered by shouts of "yes."

"All in favor say aye," Abernathy shouted. The crowd dutifully answered, "Aye." All opposed say nay," he continued. There were no nays. Abernathy announced that the ayes "have it," and then asked for a vote of acclamation, which he got.

He made his first appointment—the Rev. Jesse Jackson of Chicago, to be "city manager" and said he and Jackson would have offices in the new city hall.

Keeping with the happy, pep rally mood of the meeting, Abernathy said he was looking for a place to live in the city so he could carry Mrs. Abernathy over the threshold.

"We got to stay with you. If we go up we all go up together. If we go down, we all go down together," Abernathy said.

He said the community would elect a city council, and establish a sanitation department—"you don't want any diseases breaking out here"—a health department and a welfare department. He said the city doesn't need a sheriff or police chief and changed the name of the marshals to "peace keepers."

LODGING OFFERED

He then called on Bevel to get the people ready for the demonstrations, today. But before Bevel could speak, Abernathy pointed to a man in the crowd in front of him who apparently asked to be recognized. The man suggested that Abernathy spend the night in his hotel since he was unable to find housing.

Abernathy then turned to the crowd and asked, "Is it all right with you if I stay in a hotel tonight but come in tomorrow?" The crowd answered yes.

Jesse Jackson then took the microphone and said, "It is important that we make decisions ourselves and not let the press kill our leaders."

He said Abernathy had begged to be permitted to stay at the campsite, but that the staff was worried about the leader because "you ain't got a whole lot of Abernathys around. I don't want him around here every night. They (white folks) protect their leaders. I don't want him down with me. I want him to stand on my shoulders. . . . We have a leader and to give him pneumonia (to prove a point) is like casting pearls to the swine." The crowd shouted its approval as Abernathy stood by impassively.

DOMESTIC FOOD ASSISTANCE ACT OF 1968

Mr. MONDALE. Mr. President, on May 16, I introduced a bill called the Domestic Food Assistance Act of 1968. This bill is aimed at ending the endless cycle that now exists in this country of hunger, poverty, sickness, and death among the poor.

On May 17, I had the opportunity to visit Resurrection City and to view at first hand some of the things the citizens board of inquiry had found about "Hunger, U.S.A."

An article written by Robert C. Maynard, and published in the Outlook section of Sunday's Washington Post, adds an important dimension to our understanding of the problem. For the hunger problem is not an abstract thing. It is something more than statistics. It is people. Mr. Maynard's article well documents the devastation in terms of health, ability to work and learn, even ability to seek redress of grievance, all of which can be attributed to hunger.

Mr. President, we must and can overcome the problem of hunger in this land. I am confident that a comprehensive attack on starvation and malnutrition such as that included in my bill will help us do just that.

In the hope that vivid realization will stimulate the kind of response we need to the hunger problems before us, I ask unanimous consent that Mr. Maynard's article be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THEY ARE BORN HUNGRY

(By Robert C. Maynard)

The streets of Frogtown are paved with dust. The houses are shacks that sit on silts. In Savannah, a stranger usually finds his way by noting the names of streets on stone markers, about four feet high, that stand on each corner. But they do not stand in Frogtown; they lie on their sides because the dust will not sustain their weight in an upright position.

Thus a stranger in Savannah's Southwest Negro ghetto can never be certain what streets go which way. He has to rely on the street urchins, who come up and beg, "Mister, can I have a penny?" Sometimes the urchins don't know the names of the streets either. "Who you want, Mister? You want Mama Dee? She live in house right over dere."

When strange men come to Frogtown, they are looking for "Mama Dee." Kids of 5 and 6 already know that, even if they don't know the name of the street on which they live.

A couple of hundred miles from Frogtown, on a road off Highway 80 in Demopolis, Ala., the car was making great bumping noises as it negotiated the craters in the mud road. A little boy with sores on his arms and mud caked on his brown knees watched the car from behind a tree.

The car stopped and the driver smiled at the boy. He turned and fled like a frightened deer down a small path and into a house made of tin, with planks of pine wood where the windows should have been.

DOOMED BABIES

Dr. Alan Mermann loves children, which is why he is a pediatrician. He was talking about children being asleep. "It was the first time I had seen children just walk into a classroom and fall asleep."

He was describing Negro children in Lowndes County, Ala., where he did a study and came to the conclusion that the Negro children there were doomed to incomplete lives at the moment of conception. Lack of protein in the mother's diet, lack of prenatal care and lack of proper diet after birth would prevent their brains and bodies from developing.

The U.S. Commission on Civil Rights, to which Alan Mermann gave his views on the health of the children of Lowndes County, has collected masses of numbers and facts on the condition of Negroes in the Alabama Black Belt. Dr. Mermann, a Yale pediatrician, said that life for Negroes is ten years shorter than life for whites living in the same county.

That is an abstraction, a statistic arrived at by working with charts and slide rules and vital statistics from the State Health Department. One might hear it and grasp its meaning, or one might fail to sense its importance until one met Mrs. Haynes.

A BORROWED DRESS

Mrs. Haynes wore anklets rolled around the tops of her shoes. The varicose veins in her ashy brown legs stood out like cords. The faded cotton dress had been borrowed from a neighbor for the occasion of her appearance before the Civil Rights Commission in Montgomery, 40 miles from her home in Dallas County, Ala. Her hands had a hard sheen, as though the skin were plastic.

What Alan Mermann's numbers failed to convey in meaning was inescapable in the face of Mrs. Haynes. Her elongated face is almost fleshless and her eyes are shallow in their sockets. She holds her head at an angle as she sits before the commission. The television floodlights give her skin a pallor almost corpselike.

"How old is Mrs. Haynes?" a reporter asks another sitting at the press table. He says the records show her age as 42. "Forty-two!" the first newsman says. "She looks like 60."

Mrs. Haynes is the mother of six children. She lives in a shack comprising two rooms, but the roof over one of them leaks when it rains, so in fact they live in one room, all sleeping in two beds.

There water supply and their toilet facilities are a creek or a spring 100 yards from the house. Their light is a kerosene lamp.

Mrs. Wade was sitting opposite Mrs. Haynes that morning in Montgomery, also testifying. What had she had for dinner last night? "Oh, we ate good last night. We have greens and cornbread." Some nights, after the Federal food stamps have run out, the sole meal of the day is "milk bread." That's bread soaked in milk, and perhaps it will be the diet of the Wade family for ten nights.

THE SHOCK OF BOUNTY

Eli Johnson was transfixed. He comes from a family whose circumstances are the same as Mrs. Wade's. They both live in Selma. But this particular evening, 18-year-old Eli Johnson was far from home, in Atlanta.

He was standing looking at a buffet table with hundreds of pounds of food on it, including two 30-pound roasts of beef. He looked at it for a full minute. He literally did not know what to make of it.

An Atlanta matron, one of those who had prepared the food, gave him a gentle shove. "Go on and eat," she said. "Go ahead, son."

Rich Negro Atlanta, which proudly boasts more Negro millionaires than any other city in the country, had outdone itself. The Poor People's Campaign was coming through that afternoon and they decided to do it up right in the town that gave birth to Martin Luther King Jr.

Eli Johnson was in a mild state of shock. He lifted a chicken bone off the table and started to walk away. The woman showed him back toward the white-clad chef, who was carving off huge hunks of rare red meat for the Poor guests. Eli Johnson took the meat on his plate and walked toward a chair in Archer Hall at Morehouse College.

There are statistics that say that Eli Johnson will have a lifetime income one-third of that of a white youth of the same age and the same number of years of schooling in Dallas County, Ala. Those statistics are important for what they tell us about the state of our Nation.

But there is Eli Johnson, uncertain of taking a piece of roast beef; Mrs. Wade with her milk bread for ten days; Mrs. Haynes with her gaunt, aged face at 42; Dr. Mermann's sleeply children who are protein-deficient before birth; the boy who is frightened of cars and strangers, hiding in a tin hut, and the children of Frogtown, who understand hunger and corruption before they know the name of the street on which they live.

These are the faces of black Southern poverty.

Only young Eli Johnson is on the Poor People's March. It is almost gratuitous to say so, but the rest were too poor to come. Across the South of this Nation, there are families and people who are unaware that there is any place where life is different from the hunger that they see and feel daily.

Washington is a remote place and talk about doing something to change the daily

condition is dangerous talk. Demanding can be deadly.

A WATERY ABATTOIR

"Mr. Charlie is a terrible creature," said the Rev. Ralph David Abernathy in Birmingham one night a couple of weeks ago. He went on for three grisly minutes speaking of the "untold" number of black bodies yielded up every spring by the Pearl River that runs through Mississippi.

And James Bevel, a top associate of Mr. Abernathy in the Southern Christian Leadership Conference, echoes him by saying: "There is a conspiracy out to murder off black people."

Hosea Williams, another top SCLC official, after being told one day that he could not lead a march in Montgomery because the lack of a parade permit made it illegal, said: "Of course it's illegal. Whenever black people want to do anything for themselves, it's 'illegal.'"

And the Rev. Andrew Young, walking along the route of march during a Memphis demonstration, talks with a reporter friend about the Alabama Black Belt, where Selma and Lowndes County are. He says:

"The oppression has increased. They are trying to drive Negroes out by whatever means because now that they have the vote—with their overwhelming numbers—they could take control. The oppression is systematic."

None of these men is a radical black nationalist. Each, in his own way, has demonstrated what their slain leader, the Rev. Dr. Martin Luther King Jr., tried in his lifetime to make clear: The nonviolent civil rights movement is determined to seek change through tactics that do not set race against race, color against color or culture against culture. But it is safe to say now that SCLC's leaders see different handwriting on the wall.

AND NOW A DIRGE

They always sing as they march through the towns and cities bidding the poor and the oppressed to join and come to Washington for the great confrontation with the seat of power. Usually the songs are gusty, determined anthems: "Oh, Freedom," "Ain't Gonna Let Nobody Turn Me Around," "We Shall Overcome" and "Freedom, Freedom, Freedom."

Lately, another has slipped into the repertoire, almost so naturally that one accustomed to hearing the singing might not notice. J. T. Johnson, the rich baritone, often leads it: "This May Be the Last Time." It is sung mournfully, almost dirgelike.

Mr. Abernathy has said it in words, as has all of the SCLC leaders: "This may be America's last chance."

The bearded Mr. Bevel, his voice shrill with indignation, warns that black people have become a liability for white America. Slave labor first, cheap labor next and now a burden as nonlabor.

Worse than that, a restless people with a tragic history, disrupting in pursuit of a share of the wealth, may through their activities and their weakness already be goners.

"I am here to tell you," Mr. Bevel says to a huge Memphis rally, "that white America is on the verge of liquidating her liability—black people."

POOR WHITES ABSTAIN

So the hunger in the Southland, the rats in the big cities, the lack of medical care and education in both city and country—all of it has come together for SCLC as never before. It has taken on a meaning larger than accidental injustice. It has become a death knell for a people, and thus for a whole nation as well.

It seems not long ago that only the most radical were speaking of conspiracies against black people. Now SCLC, always militant but never alarmist, fears that the forces of reaction are on the move against blacks the Nation over.

To avoid any tight racial circle, SCLC was determined from the beginning that the Poor People's Campaign would not be accused of being the black people's campaign. It wanted the whites of Appalachia, the Indians off the plains and the Spanish-speaking people from the Panhandle and the cities. But the others have not come in significant numbers for a variety of reasons.

The whites of Appalachia, as one observer put it, have nothing but their whiteness to set them apart. To join in such an effort would erase even that sop to ego in a Nation of white power.

"If these whites in Mississippi had any sense," Mr. Young was saying in the hearing of several state highway patrolmen in Edwards, Miss., "they would be in the Poor People's Campaign." But he was conceding what ideologues have recognized in this country for years: Race identification transcends class interests.

That this is especially true among the poor is evidenced by the failure of Mr. Abernathy's crusade to capture the imagination of poor whites with a program that would help them as much as it would Negroes—full employment or guaranteed annual incomes.

One SCLC executive, after being chided by reporters for organizing on the wrong side of the tracks in Marks, Miss., told an anecdote that illustrates SCLC's dilemma: "We had just gotten into town and we started to go through the white neighborhood toward city hall. We looked across the street and saw this tough group of white cats looking over at us. And I said, 'Y'know, these are the guys we should really be organizing; the blacks already have the message.' We looked over at them again and got that hard, mean stare, and I said, 'Naw, maybe not yet. They don't look ready for us.'"

It has been SCLC's position that the power structure that preserves poverty among Negroes does the same among whites, and that in fact the poverty of one is essential to the maintenance of poverty among the other.

A large firm that decided to locate a plant in rural Alabama discovered that its potential production employes could not pass a simple industrial aptitude test. The failure rate was essentially the same regardless of race.

The simple fact is that the schools of the rural South, because of their lack of funds and their archaic practices, perpetuate ignorance among whites and blacks alike. That the ignorance among blacks is more rigidly maintained is a matter more of degree than of substance.

Perhaps therein lies SCLC's failure to capture the imagination of poor whites. Perhaps it is that persistence of ignorance, presided over by men with 19th century mentalities, that forces Abernathy's crusade to be for minorities rather than all poor people.

SIGNS OF TOLERANCE

For all of that, there are signs that the South is changing. Mr. Abernathy led a march across Edmund Pettus Bridge in Selma a couple of weeks ago to show that it could be done; marchers who tried it three years before were tear gassed and mauled.

And Hosea Williams, in a memorial service for Dr. King on the steps of Dexter Avenue Baptist Church in Montgomery, stood a little more than 100 yards from the Capital, where Lurleen Wallace's body lay in state, and said: "If Montgomery is a great city today, it is not because the Wallaces made it great but because Martin Luther King was the pastor of this church in this city."

In Savannah on a sultry Saturday night, a group of newsmen—a very integrated group, as it happened—dined sumptuously at one of the city's finer restaurants with no incident beyond a stare from time to time.

In Greenville, S.C., a Negro who was lost was offered the escort services of a motorcycle policeman, and throughout the deepest South the restaurants and motel facilities that were once exclusively white have ceased to be so.

"Another racist myth bites the dust," someone mused at dinner in Macon, Ga., one evening. Again, Negroes and whites sat eating together in what was not long ago an all-white restaurant. The waitress represented the dead myth.

The owners had once complained that if Negroes came there, the waitresses would not serve them. This particular waitress made such a point of being cordial that somebody wished aloud that her attitude could be exported to the North.

POLICE SMOOTH WAY

Following the Southern Caravan of the Poor People's Campaign, the striking difference was in the police and city officials generally.

Although Charleston, S.C., called in the National Guard, Police Chief Trenton T. (Tally) Tillman made it clear to his men and to white Charleston that the marchers were to go through without any difficulty. He cleared traffic and offered other services in a quietly efficient manner that suggested that he had been clearing the way for civil rights marchers all of his career.

Perhaps the most ironic omen of change was in Macon: a deputy chief of police, riding a motorcycle, admonishing a white citizen to "get that car out of the way and give these people room to march."

It is not too cynical to suggest that the local police through the South realized that their towns were not direct targets of the demonstration. Traffic would be tied up for a couple of hours, but then the caravan, after taking on some local Negroes, would be leaving for the next town.

Hosea Williams, in Edwards, Miss., to the local whites:

"You all are glad to see these niggers leaving Mississippi, but you ain't gonna be glad to see these niggers coming back."

And the exceptions, the challengers of even that small amount of change in attitude by local police: Detective John W. Martin Jr., of the Danville, Va., Police Department, going one day ahead of the caravan all the way from Mississippi, warning police departments that the demonstrators were armed and dangerous.

Perhaps that says most about the change. Nowhere was he taken particularly seriously; it probably helped that the FBI went behind Martin and reassured the local police.

A REFLECTED ATTITUDE

Local police, of course, are public servants of the ownership class. Unless that class in the South either changes its composition, its attitude or both, the police will continue to carry the image of oppressors. Thus Eugene Patterson is important to the issue.

Blond, self-assured and full of Southern grace, he is a member of the Civil Rights Commission. Toward the end of the commission's five days of hearings late last month in Montgomery, Hosea Williams was called to the stand.

It was one of those appearances that hush the house. Dressed in a white tunic like shirt and a black blazer, Williams probably gave one of the longest single answers on record in commission proceedings.

Asked to describe the SCLC and its work, he began in Montgomery, describing Dr. King and the Montgomery Improvement Association, which led a bus boycott that went on for 381 days—and won. Dramatically, he described the evolution of the nonviolent movement, the Freedom Rides, the sit-ins, the search for justice in housing, jobs, education and equal justice before the law.

SCLC he said, is not opposed to "Rockefeller and Ford being millionaires. But we should

not have to live in the Buttermilk Bottoms of Atlanta, the Wattses of Los Angeles and the Harlems of New York." Instead of spending "billions to put man on the moon, we should spend billions to put men on their feet," Williams told the commission. "This land," he nearly thundered, "is our land."

ASHAMED OF REACTION

The recreation hall of Maxwell Air Force Base was still when he finished. Then Eugene Patterson, publisher of he Atlanta Constitution, one of the South's great newspapers, spoke.

His fellow white Southerners, as well as all Americans, Patterson said, would make a "grave mistake if they did not heed what Mr. Williams is saying." He traced his own reaction to the very events Williams had described.

He was disturbed by the bus boycott, he said, because it disrupted the order of his region, but looking back, he was "ashamed at my reaction." And the same for the Freedom Rides and the sit-in movement, the voter registration drives—all of it. Finally, he said, "men do change," and, for all that the movement has done, "this Nation should be profoundly thankful."

Interracial groups being able to dine graciously in Savannah's charming restaurants is the movement's doing, just as it is the movement's doing that Macon County, Ala., has a Negro sheriff. And probably, but for the early 1960's, it would have been impossible for the Southern Caravan to be escorted through the South by helpful motorcycle policemen.

All of those advances in a region that has been retarded by the most primitive of human passions—the passion of hate out of hand and to be cruel for the sake of color—simply prove what is known: Racism need not prevail if strong men will it otherwise.

AN UNANSWERABLE QUESTION

But Mrs. Haynes is dying of starvation by inches. Mrs. Wade's children live on less protein in a month than middle-class children get in a day. Eli Johnson needs more than one good meal in Atlanta. And as for the children of Frogtown and the boy in Demopolis, they need everything.

They are the ones left behind by a movement that benefited those who were already on their way. Mrs. Haynes, in the most pathetic moment of her testimony, was asked what would make her life better. She stared in bewilderment at the very audacity of the question. She never answered. She could not conceive of an answer.

It was women like Mrs. Haynes pleading to Dr. King for relief in Marks, Miss., that brought tears to his eyes. Explaining to Mrs. Haynes what "Resurrection City" in West Potomac Park has to do with her would probably be very difficult, and for different reasons from those for which it would be difficult to explain to Sen. Eastland.

But the SCLC people think that in their effort lies the answer to the question Mrs. Haynes could not answer. And they think that time for Mrs. Haynes and for the Nation is running short.

ONE HUNDREDTH BIRTHDAY ANNIVERSARY OF GEN. JOHN L. HINES

Mr. BYRD of West Virginia. Mr. President, I think it would be appropriate for us to pay tribute today to one of the Nation's oldest living soldiers.

Retired Army Gen. John L. Hines, a native of White Sulphur Springs, W. Va., is celebrating his 100th birthday today at Walter Reed Army Hospital.

General Hines, who was affectionately nicknamed "Birdie" because of his springy gait, succeeded Gen. John J. Pershing as Army Chief of Staff in 1924. He held that distinguished post for 2 years before replacing the late Gen. Douglas MacArthur in command of the Philippines.

An article published in today's Washington Evening Star relates that after dancing with him one day in London, the late Lady Astor said General Hines was "the best thing ever to come out of West Virginia." That was quite a statement from a lady who was reared in neighboring Virginia.

Mr. President, I extend to General Hines best wishes on his 100th birthday.

I ask unanimous consent that the Star article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FORMER ARMY CHIEF OF STAFF: GENERAL HINES, 100 TODAY, RECALLS DAYS OF PHIL SHERIDAN

(By Herman Schaden)

Gen. John Leonard Hines, a former Army chief of staff who remembers when Phil Sheridan held a comparable post, is celebrating his 100th birthday today.

Celebrating may not be the best word, since Gen. Hines has never been much for ostentation, but his family and intimate friends are marking the day with a little ceremony in his room at Walter Reed Hospital.

"His mind is reasonably quick and he can bring back military memories dating to the days when Sheridan was commanding general of the Army," said a friend, L. Robert Davids.

As one who had done considerable research in such matters, Davids say Gen. Hines is the first high-ranking government official to reach the century mark.

"He probably best fits that description popularized by one of his Army colleagues—that 'Old soldiers never die, they just fade away,'" said Davids, realizing that Gen. Hines has been publicly unnoticed since his retirement 36 years ago.

In his time, Gen. Hines was very much in the news. The son of Irish immigrants, he was born May 21, 1868 in White Sulphur Springs, W. Va., and managed entrance to West Point despite a one-room schoolhouse education. Called "Birdie" Hines by his Army football teammates because of his springy step, he graduated in 1891.

An Indian fighter in Montana when the Spanish-American War broke out, he insisted on getting into the Cuban action and won several decorations.

"En route he 'requisitioned' Teddy Roosevelt's plush troop train in Florida and got Col. William Wherry's troops to the disembarkation point ahead of the Rough Riders, who arrived later in a coal car, dirty and angry," Davids said Gen. Hines was fond of recalling.

Wherry must have been impressed, for later he gave his daughter, Rita, to Gen. Hines in marriage. They had two children, Mrs. Alice Cleland of 6200 Oregon Ave. NW. and Col. John L. Hines Jr. of 4438 Reservoir Road NW.

Gen. Hines' long military career closely followed that of another soldier who spent his later years at Walter Reed, Gen. John J. Pershing. They were together chasing Pancho Villa in Mexico in 1916–17.

In World War I Gen. Hines rose from lieutenant colonel to major general with the American Expeditionary Forces headed by Pershing—a record of battlefield promotion equalled only by Stonewall Jackson.

Gen. Hines was known as a dazzling horseman and, perhaps paradoxically for one of his nature, a gay blade on the dance floor. Dancing with him in London after the war, Virginia-bred Lady Astor hailed him as "the best thing ever to come out of West Virginia."

Gen. Hines drew high praise from Gen. Pershing, and it was not surprising that the former was selected to succeed Pershing to the top Army post on the latter's retirement in 1924. Hines had the tough job of keeping the bare-bones post-wartime Army in fighting trim.

One of his unhappiest duties was to order the general court martial for Gen. Billy Mitchell's denunciation of military air force policy.

"Gen. Hines was greatly disturbed by the whole affair," Davids recalled. "He had no quarrel with Mitchell's long-range forecast regarding the influence of air power and had great respect for his judgment."

After his two-year term as chief of staff, Gen. Hines replaced Gen. MacArthur in command of the Philippines Department and on his 64th birthday, retired to return to his native West Virginia.

He has been at Walter Reed almost two years. His visitors there have included a famous former Army chief of staff named Dwight D. Eisenhower and one of his former junior officers of another day, retired Gen. Charles Bolte.

Gen. Hines' son, Col. Hines, also was a West Point graduate and highly decorated soldier in World War II. He was hit by a mortar shell at Frankfurt, and lost his sight, but manages to lead an active life.

GI IS SLAIN BY SHOTGUN BLAST ON STREET HERE

Mr. DODD. Mr. President, Tuesday morning, May 21, 1968, began and ended this way for a Hyattsville soldier home on leave before being shipped to combat in Vietnam: He was shot in the face and killed by a single blast from a sawed-off shotgun as he stood on the street in front of a restaurant.

There is no more moving argument for strong Federal firearms controls that include rifles and shotguns than this tragedy.

The story was reported in today's Washington Daily News.

I ask unanimous consent the article be printed in full in the RECORD as a reminder that rifles and shotguns are used by assassins and should be controlled under any law passed by this Congress.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Daily News, May 21, 1968]

GI IS SLAIN BY SHOTGUN BLAST ON STREET HERE

A Hyattsville soldier, home on leave before shipping off to Vietnam, was killed early today in front of an Irving-st restaurant with a single blast of a sawed-off shotgun, police said.

Homicide detectives said that Pvt. Michael Feathers, 19, white, of 3622 Deane Drive, was standing on the sidewalk in front of the restaurant near 14th-st when a man approached, exchanged a few words with him, and then snatched the shotgun from under his coat.

The man fired point-blank at Pvt. Feathers, the charge striking the soldier in the face.

A suspect was arrested a short time later and police identified him as Arthur Luke Marshall, 21, white, of 1315 Edgewood-st, Kensington. He was charged with homicide.

HIGH COMMISSIONER FOR HUMAN RIGHTS NEEDED

Mr. PROXMIRE. Mr. President, protection can be afforded human rights and

dignity only in a world that lives in peace.

Unfortunately, and tragically, war and all its destruction continues despite the fact that conflict has been outlawed by the United Nations Charter.

The intensity of violence and the brutality of war creates greater problems for man to attempt to resolve. The inhumanity of warfare tears apart human and ethical rules and manifests itself in a countermovement of terror and brutality.

It is my view that the gravity of this situation which is becoming a global sickness and is engulfing the world must be dealt with by the United Nations, the various government's church leaders and public opinion, so that their forces may join together to halt the trend.

There is a great deal of merit in the recommendation of the Commission to Study the Organization of Peace. It urges that this country, during the 1968 International Year for Human Rights, reaffirm, by a solemn declaration, its intention to abide by the provisions of the United Nations Charter relating to human rights and by the provisions of the Universal Declaration of Human Rights which constitute an authoritative interpretation of the charter.

I am in full agreement with the Commission's further recommendation that our Government prepare and present to the U.N. a comprehensive report on the progress made in the United States since 1945 in promoting respect for human rights and fundamental freedoms specified in the declaration, through legislation, administrative measures, judicial decisions, and other means, and that the Government of the United States invite other governments to present to the U.N. similar progress reports.

I completely support the Commission's endorsement of the appointment of a High Commissioner for Human Rights and would urge that our country lend all possible aid to that Commissioner in the performance of his duties.

THE URBAN CRISIS—WHICH WAY AMERICA—ADDRESS BY SENATOR BYRD OF WEST VIRGINIA

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD the text of an address on the subject "The Urban Crisis: Which Way America?" which I delivered yesterday at a breakfast meeting of the National Forest Products Association at Boca Raton, Fla.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

The subject on which I have been asked to speak is "The Urban Crisis—Which Way America?" I prefer, however, to think in terms today not so much of a crisis which more particularly addresses itself to the cities, but rather to a greater crisis—the *National Crisis*.

Which way *is* America heading? It is a question that deeply involves every American citizen.

Already this spring, more than a hundred U.S. cities, including the Nation's Capital, have been struck by racial violence, rioting, looting, arson and mob murder. Forty-six persons have lost their lives and 2,561 others have been injured—and the long, hot summer still lies ahead. What is the cause, and what is the answer? Why this crisis in the cities?

There have been many answers advanced by many people. Most of the answers boil down to the same hackneyed generalizations. You are familiar with the standard cliches on the causes and cures of riots. The President's Riot Commission summed them up when it blamed "white racism" as the fundamental cause and recommended billions in new Federal programs as the cure.

But I think it is time, in Adlai Stevenson's fine phrase, to talk sense to the American people about the riots. Both the Commission's finding of cause and its recommended remedy, in my judgment, are superficial. The causes of the crisis faced by our cities—and, in a larger context faced by our country—involve more significantly real factors than "white racism," and the cure most certainly must involve more than just the appropriation of additional billions of dollars by the Federal Government. There are no easy or pat answers to the problem.

The crisis our country faces is a crisis of attitudes—the attitudes of government and the attitudes of the individual. The question of governmental responsibility and of individual responsibility lies at the heart of the matter.

The basic responsibility of Government is twofold: to protect its citizens, and to provide an atmosphere in which they may enjoy equal opportunity under the law.

The concomitant responsibility of citizens is to respect and support the authority of Government and to obey its laws.

The good citizen also makes an effort, commensurate with his ability, to be a productive member of his community and to contribute his fair share to the society that protects him as he, through his own drive and initiative, strives to develop the opportunities provided.

What are the attitudes that lie back of the crisis that has developed in America?

From the standpoint of Government, they can be summed up quickly, I think, as the misguided, and mis-named, "liberalism" of those in the Congress and in the Executive Branch who seem to believe that the problems of all of our citizens can and should be solved by the Federal Government—they espouse a sort of paralyzing paternalism which holds that Government should take care of every citizen in every area of his life, economically and socially, from the womb to the tomb.

It is the twisted attitude that comes down from the Supreme Court that the rights of a convicted criminal are somehow superior to the rights of society and the innocent law-abiding citizen . . . the attitude of those in Government who counsel "restraint" in dealing with rioters and lawbreakers . . . the attitude that more and more Federal appropriations will, in some miraculous way, solve our problems or make them go away.

From the standpoint of the individual, it is the mistaken attitude that the individual has a "right" to demand that Government guarantee him a livelihood whether he works for it or not . . . that he can command Government to confer status upon him . . . that it is his "right" to violate laws with which he does not agree . . . that it is his "right" to join in mass acts of so-called "civil disobedience," and to disrupt and destroy that which he does not like.

Far too many Americans, it seems to me—in Government and out—have allowed themselves to become terribly mixed up as to the responsibility of government and the responsibility of the individual.

This is manifested by mostly disturbing Phenomena:

The rapid growth of welfarism, the belief of some that constructive individual effort is old-fashioned, the sickening increase in crime, the proliferating defiance of authority, the demonstrations, the riots, and the sinister infiltration of subversive elements that aim at nothing less than the destruction of our way of life. Let us look now in greater detail at some of these manifestations of attitudes so indicative of the misguided responsibility and, yes, the irresponsibility which threaten to destroy the Republic.

An example is the peculiar spectacle of the so-called "poor people's campaign" in Washington—conceived and organized not by those who are poor themselves; but rather by others whose motives may well be something quite unrelated to improving the lot of people less fortunate than themselves.

The march on Washington and the camp-in have raised strong feelings on my part.

I have compassion for the poor, and I have supported much legislation to improve opportunities for all of our citizens.

Yet the leaders of the poor people's campaign would have it appear that nothing has been done by government for the disadvantaged and the minorities in America.

Yet, since 1960, Federal spending on programs directly benefiting the poor has reached the astonishing total of 138 billion dollars. The total for this year is 24 billion, which will rise next year to 27 billion dollars. Included are such things as welfare, food stamps, medicaid, the anti-poverty programs, low rent housing, unemployment insurance, retraining programs, adult education and many more.

This year, 37 billion dollars is also being spent by the Federal government for direct aid to urban areas.

The truth is that no government has ever done more for its citizens. Rather than being callous and indifferent, the Federal Government is both sensitive and responsive to the needs of its citizens.

More can and should be done to help both the poor and the cities with their problems. But Government can do only so much, and it should not be done under duress or in response to the threats that the poor people's campaign leaders have made. The enactment of effective Federal programs demands a careful and accurate assessment of needs, costs, revenues, etc.

It is my observation that a great deal of what is being called poverty at this point, using arbitrary income figures as the criterion, may be more psychological than real.

And separating those who will not work—and who are shiftless and indifferent by nature—from those who deserve help is difficult. Training programs and other programs calculated to help people help themselves—these must be the aim of any governmental aid. I am afraid that most of what the poor people's campaign seeks is simply greater handouts.

I am distressed at the naive gullibility with which this march has been received, especially by some of the churches and some of the clergy, who have embraced the campaign of demonstrations and its leadership without question. But that followed naturally, I suppose, as a result of the emotional binge the country went on as it over-reacted to the assassination of Dr. Martin Luther King, Jr. King was virtually defied, compared with Jesus Christ, and the flags were flown at half staff for the man who had branded his own country "the greatest purveyor of violence in the world" as he espoused the Communist line on the war in Vietnam, who held himself to be above the law, and who counseled others to break the laws they did not like.

The leaders of this campaign have promised that, if they do not get their "demands" from Congress, they will escalate their nonviolence into planned civil disobedience, which is another name for breaking the law—and lawlessness is already rife in the Nation's Capital.

The people of the District of Columbia are still reaping the bitter fruits that have sprung from the seeds of "restraint" sown by the Federal and District Governments in their weak-kneed response to the violence during the recent riots, and I would hesitate to say whether the officials—who were so low on adrenalin—have yet found out that their low-key response was an open invitation to further lawbreaking.

Irreplaceable business has been lost, insurance policies have been cancelled or will be raised, life savings have been wiped out, business enterprises have been ruined, tax revenues have been lost, and uncounted thousands of tourists have cancelled visits to the Nation's Capital.

In fact, I am told that your own convention was a casualty of the rioting, and that it is being held here instead of in Washington because of what has occurred.

In the last week or so, disheartened merchants in the District of Columbia have taken full page ads in the newspapers appealing to the government for far sterner measures than have been used so far to deal with the lawbreakers. This is a shocking commentary on the state of law enforcement in this Nation's capital city, a shocking commentary on the sorry manner in which at least a portion of our Government is discharging its basic responsibility of protecting citizens, their lives, their properties, and their businesses.

The sickening increase in crime, of which rioting has become an integral part, is not limited, of course, to the District of Columbia by any means. The figures now being processed by the FBI are expected to show that crime has soared by 88 percent in the United States from the beginning of 1960 to the end of 1967—this while the population of the country was increasing by only 10 percent.

I must say in all fairness to the Government officials whom I have criticized here by implication that I place much of the blame, for the increase in crime in this country, on the permissiveness that has led to America's current state of moral and ethical deterioration.

As reluctant as I am to say it, some of the churches must share in the blame for this decline in ethics and morality and for the growing disobedience to authority and the rule of law. I have already cited the example of the defiance of duly constituted authority by Martin Luther King.

But even more important is the fact that activist members of the clergy, even though I believe they constitute a minority of the total clergy, have virtually deserted the religious altar for the political soapbox in their activist zeal to achieve make-believe "relevance" for the church.

And I would not omit the left-wing radical intellectuals of the campus, who have incited their own students to disobedience of authority and to virtual insurrection in many colleges and universities. Many campuses have become training grounds for violent revolution.

One of the most dismaying of all the factors that have led to the present state of lawlessness in this country is the over-protection, the coddling and the veritable slobbering over the criminal that the U.S. Supreme Court has indulged in in some of its decisions dealing with the rights of accused persons.

The Court has seemingly departed from the bed-rock principle upon which law and order must depend—that punishment must follow crime—and, as a result, we are witnessing the spectacle of hoodlums running wild, secure in the knowledge that little, if anything will be done to them, even if they are arrested.

Our citizens ought also to be worried, I think, about the cavalier manner in which the court has hamstrung virtually every effort the Congress has made to strengthen the internal security of our country. I am not one who sees a communist under every bed, but neither do I wish to adopt the ostrich attitude. I must say that some of the things I see, have an ominous look.

Agents of North Vietnam have trained some Americans in guerrilla tactics in Cuba; the Progressive Labor Party, the major Peking-oriented communist organization in the United States, his distributed literature calling for guerrilla warfare in America and spelling out how it can be carried on; and Stokely Carmichael recently stated that black nationalism in this country is "progressing toward urban guerrilla war in the United States."

And what is our country doing to combat these malignant cancers that are spreading so swiftly, eating away at our Nation's vitals?

As discouraging as it may be, the answer is: All too little!

The reason is not hard to find. Very bluntly, it is America's lack of strong, courageous, determined leadership.

In May, 1967, only a year ago, the Attorney General of the United States was quoted as saying, "The level of crime has risen a little bit, but there is no crime wave in this country."

No crime wave? What does the Attorney General think it takes to constitute a wave? When he uttered those fatuous words, crime had already soared 66 per cent in six years. Now it has spiraled to 88 per cent since 1960.

Message after message has been sent to Congress by the White House dealing with crime, urging new laws to meet its threat. But where has there been any mention of the crucial role the Supreme Court has played in bringing the present sorry situation to pass?

Congress may give the President a far more stronger and better bill than he even asked for when the crime bill now before the Senate is passed, particularly if title II, is adopted. But why have the existing laws already on the books not been enforced? What can this country do to prevent its own destruction by the forces we have discussed?

We desperately need a change of attitudes in our country, for this is the crisis we face. The crisis in our cities can never satisfactorily be dealt with until we have a return to law and order in America, a return to individual responsibility and to governmental responsibility.

I reiterate what I said in the beginning: the first responsibility of government is the protection of its citizens.

If the police of this Nation are not supported now, the law will perish and this Republic cannot endure long thereafter.

Moreover, every effort must be put forth to stamp out illiteracy and the emphasis, for every individual, should be upon education. Education for the sake of education, rather than for the sake of integration—this is the important thing.

Education will light the paths to mutual respect, cooperation, and better understanding.

Booker T. Washington, one of the greatest of American Negroes, lived as a boy in Malden, West Virginia, where he toiled in the salt works and in the mines. In later years, when he had become a great educator, he made a statement, the wisdom of which can benefit not only the Negro boy or girl, but also the white youth who is desirous of making a success in life:

"When a Negro girl learns to cook, to wash dishes, to sew, to write a book, or a Negro boy learns to groom horses, or to grow sweet potatoes, or to produce butter, or to build a house, or to be able to practice medicine, as well or better than someone else, they will be rewarded regardless of race or color."

Also, family planning is imperative, and civil rights organizations should make intensive efforts to promote such.

The high birth rate among low-income Negro families simply cannot be overlooked.

For, whatever importance may be assigned to unemployment as a factor in riots and other developments which have racial overtones, the fact is that, in this age of automation, cybernation, and advancing technology, the problem of unemployment will always be with us.

No amount of Government largess and costly poverty programs will constitute a panacea therefor as long as the birth rate is permitted to soar, unchecked and uncontrolled, among those families least prepared and least able to provide for large numbers of children who, in later years, will be unprepared candidates for jobs which no longer exist.

Additionally, the problem of illegitimacy must be dealt with. Illegitimacy is, more and more, becoming a frightening factor in this whole equation.

How the Nation can continue to close its eyes to this disturbing fact is beyond comprehension.

Something will have to be done about it, or the burden of crime, riots, and the dole will ultimately become unbearable.

Militant civil rights groups should stop blaming the white power structure for all of the ills that are visited upon the Negro community.

Negroes must themselves take the lead in doing something constructive for themselves; and they can do this by waging war upon the evils of illegitimacy as one important beginning.

This is not to say that illegitimacy is nonexistent among the white population, but the statistics show clearly where the problem is greatest, and it should there be attacked more intensely.

Finally, no amount of Government paternalism can take the place of drive and ambition when it comes to developing the substantial and upright citizen.

Hard work, perseverence, and self-accomplishment breed independence and strength, courage and resourcefulness in the man or woman.

Somehow the glory of honest toil must be restored if this Nation is going to survive the domestic dangers that confront it.

Ladies and gentlemen, I cannot hide the concern which I have for my country at this time. I cannot avoid the definite impression that a revolution is taking place in this land and, although there have been beneficent and benevolent revolutions in the history of mankind, I fear that there are sinister aspects to the current turbulence which portend events that could shake the foundations of this Republic and destroy liberty under law.

The wave of student takeovers of colleges and universities, the endless marches and demonstrations and acts of mass civil disobedience, the threatening demands by those who advocate expanded welfarism, the increasing trend toward intimidation of legislators and government officials, the rapid growth of permissiveness which is destroying spiritual and moral concepts and values, and the horrifying trend toward lawlessness and violence—all these are ominous signs that our country faces destruction from within. There must be a rebirth of respect for law, for constitutional processes, for public order, and for personal responsibility if this Nation is to survive.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, in accordance with the previous order, I move that the Senate stand in recess until 10 a.m. tomorrow.

The motion was agreed to; and (at 6 o'clock and 58 minutes p.m.) the Senate recessed until tomorrow, Wednesday, May 22, 1968, at 10 a.m.

NOMINATION

Executive nomination received by the Senate May 21 (legislative day of May 20), 1968:

CALIFORNIA DEBRIS COMMISSION

Brig. Gen. William M. Glasgow, Jr., U.S. Army, to be a member of the California Debris Commission, under the provisions of section 1 of the act of Congress approved March 1, 1893 (27 Stat. 507) (33 U.S.C. 661), vice Brig. Gen. John A. B. Dillard, Jr., reassigned.

CONFIRMATION

Executive nomination confirmed by the Senate May 21 (legislative day of May 20), 1968:

SECURITIES AND EXCHANGE COMMISSION

Manuel Frederick Cohen, of Maryland, to be a member of the Securities and Exchange Commission for the term of 5 years expiring June 5, 1973.

HOUSE OF REPRESENTATIVES—*Tuesday, May 21, 1968*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

And thou shalt be called the prophet of the Most High to give light to those who sit in darkness and to guide our feet into the way of peace.—Luke 1: 76, 79.

Our Father, at the gate of a new day we bow in silence before Thee, praying for a renewal of our spirits as we face these times which try our souls, cause us to lose patience with each other, and make us impatient with ourselves.

That we may be at our best and do our very best for Thee and for our country, grant unto us the courage of a humble mind, the creative faith of a high hope, and the confident peace of a heart stayed on Thee.

By the power of Thy spirit may we maintain our integrity, be motivated by justice, and move resolutely in the direction of peace on earth and good will to men. Bless Thou the peacemakers and may the peace made be just and enduring and for the good of all.

In the Master's name we pray. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 15364. An act to provide for increased participation by the United States in the Inter-American Development Bank, and for other purposes; and

H.R. 15863. An act to amend title 10, United States Code, to change the name of the Army Medical Service to the Army Medical Department.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 15348. An act to amend section 703 (b) of title 10, United States Code, to make permanent the authority to grant a special 30-day period of leave for members of the uniformed services who voluntarily extend their tours of duty in hostile fire areas.

The message also announced that the Senate had passed a bill and joint resolution of the following titles, in which the concurrence of the House is requested:

S. 2276. An act to amend the Watershed Protection and Flood Prevention Act to permit the Secretary of Agriculture to contract for the construction of works of improvement upon request of local organizations; and

S.J. Res. 168. Joint resolution to authorize the temporary funding of the emergency credit revolving fund.

PERMISSION FOR SUBCOMMITTEE ON NATIONAL PARKS AND RECREATION, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO SIT DURING GENERAL DEBATE TODAY

Mr. ASPINALL. Mr. Speaker, I ask unanimous consent that the Subcommittee on National Parks and Recreation of the Committee on Interior and Insular Affairs may be permitted to sit during general debate this afternoon.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

INVESTIGATION OF HEATING OIL PRICES

Mr. WOLFF. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks, and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. WOLFF. Mr. Speaker, I am today requesting the Antitrust Division of the Department of Justice to investigate the procedures by which home heating oil prices are established along the east coast.

I am taking this action for the following reasons:

First. On April 4 of this year the per gallon cost of home heating oil sold to distributors was reduced by $0.005 at gulf coast ports.

Second. Yet on April 17, Humble Oil Co. raised its per gallon price for distribution along the east coast by $0.003.

Third. Immediately after the Humble increase all distributors along the east coast increased their per gallon price by an identical $0.003.

Fourth. This industrywide increase, despite the drop less than 2 weeks before in the gulf coast price, has been passed on to the consumer.

Fifth. The east coast increase came in the face of the following additional points mitigating against such an increase:

First. There is a traditional drop in home heating fuel prices during the spring.

Second. Stocks of home heating oil are higher than they have been in almost a year.

Mr. Speaker, there is no logical justification for an increase in consumer costs when prices are dropping at the original source of home heating oil. Moreover the unanimity in price among east coast distributors appears to be a collusive effort.

FURTHERING FEDERAL-STATE RELATIONS IN TAXATION

Mr. HUNGATE. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks, and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. HUNGATE. Mr. Speaker, the Western Governors' Conference at its 1968 annual meeting adopted a resolution urging the House of Representatives to further Federal-State relations in taxation by defeating H.R. 2158, the Interstate Taxation Act.

The Governors also urged prompt consideration and passage by the Congress of the consent bill, H.R. 9476, for the multistate tax compact.

Among other groups which have expressed earlier opposition to the Willis bill, H.R. 2158, are the National Governors' Conference, National Legislative Conference, National Association of Attorneys General, National Association of Tax Administrators, Council of State Governments and other organizations of State and local officials.

The resolution follows:

Be it resolved, That the 1968 Annual Meeting of the Western Governors' Conference now in session urges the defeat of the Willis bill, H.R. 2158, by the United States House